

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-5015

UNITED STATES COURT OF APPEALS

For the Second Circuit

Docket No. 77-5015

In the Matter

of

DYNAMICS CORPORATION OF AMERICA,

Debtor.

(No. 72 B 750)

HOOS & CO.,

Claimant-Appellant,

vs.

DYNAMICS CORPORATION OF AMERICA,

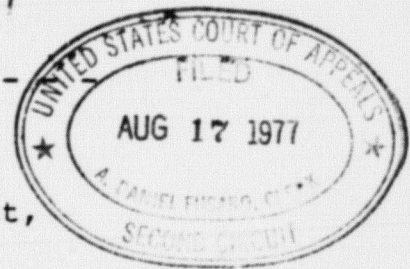
Debtor-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(No. 72 B 750)

JOINT APPENDIX

SULLIVAN & CROMWELL
Attorneys for Claimant-Appellant
Hoos & Co.
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New York, N. Y. 10005
(212) 952-8100

KRAUSE, HIRSCH & GROSS
Attorneys for Debtor-Appellee
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New York, N.Y. 10017
(212) 986-1122



PAGINATION AS IN ORIGINAL COPY

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Docket Entries

BANKRUPT DEBTOR		DIST. NO. DIV. NO.		DOCKET NO. 72B750															
DYNAMICS CORPORATION OF AMERICA 6/14		CHAPTER OR SECTION		CHECK IF ☐ Voluntary ☐ Involuntary ☐ Fee paid in installments ☐ Corporation ☐ Farmer ☐ Employee ☐ Professional ☐ Other (Non-business) ☐ Merchant ☒ Manufacturer ☐ Other (Business)															
		DATE PETITION FILED																	
		DATE CLOSED																	
		DATE DISCHARGED																	
ADDRESS OF BANKRUPT/DEBTOR (Number and Street)		DISCHARGE		OCCUPATION															
501 Fifth Ave.		☒ Granted ☐ Denied ☐ Waived or not applied for		(Check one)															
		DATE DISCHARGED		☐ YES ☐ NO															
CITY		ZONE		COUNTY															
New York				New York															
STATE		NAME OF JUDGE		NAME OF REFEREE															
NY				BK JUDGE RYAN															
NO ASSET CASES ONLY		TOTAL		PRIORITY															
CLAIMS AS SCHEDULED		\$		\$															
ATTORNEY FOR BANKRUPT OR DEBTOR		NAMES AND ADDRESSES																	
		Russo, Alroch & Gross, 41 East 42 St., NYC																	
ATTORNEY FOR PETITIONING CREDITORS																			
RECEIVER																			
ATTORNEY FOR RECEIVER																			
TRUSTEE																			
ATTORNEY FOR TRUSTEE																			
CHANGES OF PRINCIPALS																			
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:15%;">DATE</th> <th>PROCEEDINGS</th> </tr> </thead> <tbody> <tr> <td>8-2-72</td> <td>Filed petition, List of Creditors, Affidavit under Rule XI-2-B. Affidavit under pursuant to Sec. 324..referred to Referee Ryan.</td> </tr> <tr> <td>6-2-72</td> <td>Filed application and certified copy of Referee's Order authorizing debtor-in-possession to continue business.</td> </tr> <tr> <td>8-9-72</td> <td>Filed supplemental list of creditors.</td> </tr> <tr> <td>8-17-72</td> <td>Filed order staying suits. (Exemplification)</td> </tr> <tr> <td>8-17-72</td> <td>Filed order authorizing continuation of business. (Exemplification)</td> </tr> <tr> <td>8-29-72</td> <td>Filed affidavit and second supplemental list of creditors, dated 8-11-</td> </tr> </tbody> </table>						DATE	PROCEEDINGS	8-2-72	Filed petition, List of Creditors, Affidavit under Rule XI-2-B. Affidavit under pursuant to Sec. 324..referred to Referee Ryan.	6-2-72	Filed application and certified copy of Referee's Order authorizing debtor-in-possession to continue business.	8-9-72	Filed supplemental list of creditors.	8-17-72	Filed order staying suits. (Exemplification)	8-17-72	Filed order authorizing continuation of business. (Exemplification)	8-29-72	Filed affidavit and second supplemental list of creditors, dated 8-11-
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FORM BK 74 D
SEP. 1962

UNITED STATES DISTRICT COURTS
BANKRUPTCY DOCKET - COPY

☐ CHECK THIS BOX IF FILING FEES WERE PAID IN FULL AT TIME OF FILING

- 4-19-72 Filed certificate of Referee pursuant to Rule XI-10, dated 9-11-72.
- 4-19-72 Filed schedules, statement of affairs, (5c)
- 4-19-73 Filed petition of Fred M. Waring, notice to take deposition upon oral examination of J. L. Cohen, of 2 North 7th St. Stroudsburg, Penn., at 11:00 A.M., on May 23, 1973, at the Holiday Inn, Exit 52, Interstate 80 at Route 209, Stroudsburg, Penn.
- 4-19-73 Filed petition of Fred M. Waring, notice to take deposition upon oral examination of Virginia Waring of Delaware Water Gap, Penn., on the 24th of May, 1973, at 11:00 A.M., Holiday Inn, Exit 52, Interstate 80 at Route 209, Stroudsburg, Penn.
- 5/24/73 Filed Name Change of Cahill, Gordon, Sonnett, Reindel and Ohl to Cahill Gordon and Reindel. Dated: 4/27/73 (COPY TO REFEREE)
- 8-29-73 Filed notice to take deposition upon oral examination of Bear, Stearns & Co., 55 Water St., NYC., at 10:00 A.M., on Sept. 7, 1973, at the offices of Krause, Hirsch and Gross, 41 E. 42nd St. New York, N.Y. Subpoena issued. Atty's for petitioner Fred M. Waring, Netter, Lewy, Dowd, Fox, Ness & Stream, 600 Madison Ave. NYC. Affidavit of service by Morris Molosofsky. n/r
- 1/15/74 Filed Notice of taking of Oral deposition.-the respondent - Dynamics Corp of America will take the deposition of Ed Lee, etc. by: attorneys for debtor. COPY TO BANKRUPTCY JUDGE.
- 3/18/74 Filed Deposition of EDWARD JOSEPH LEE, JR., Carefree, Arizona, Feb. 7th, 1974.
- 6/10/74 Filed NOTICE OF APPEAL to District Court from the order of HON. EDWARD J. RYAN, dated: 4/22/74, as limited-the-use-of-informatic uncovered by petitioner while discovering and inspecting the debtor's records to making a creditor's claim in this proceeding, etc RET: JULY 23rd, 1974. at 10:30 A.M. in Room No. 506. (BROWN FOLDER)
- 6/10/74 Filed Counter-Designation of Record of appeal, by: attorneys for Debtor (SAME DATE AS ABOVE)
- 7/18/74 Filed MOTION TO DISMISS APPEAL by: Appellee, Dynamics Corp of America on grounds that (1) Appellant Fred M. Waring, has failed to file a brief as required by Bankruptcy Rule 808, etc. by: Krause, Hirsch and Gross by: Sheldon Lowe - Cole and Groner, by: Walter H. Fleischer, Washington, D.C.f.
- 7/18/74 Filed MEMORANDUM in support of motion to dismiss the appeal etc., etc. Alternatively, the order of the Bankruptcy Judge should be affirmed. sub. by: (same as above Motion to dismiss appeal) f.
- 7/15/74 Filed Affirmation for adjournment re: appeal on for: 7/23/74. from the order of Bankruptcy Judge, Ryan. Adjourned to: 8/20/74. sub. by: Edward M. Berman, atty for petitioner., Fred M. Waring, Dated: 7/22/74.)

CONTINUED ON PAGE 3.

DYNAMICS CORPORATION OF AMERICA

LOCKET NUMBER

DATE	PROCEEDINGS
8/23/74	ORDER and Filed/stipulation discontinuing appeal on calendar of August 20th, 1974 by and between attorneys for petitioner Fred M. Waring and attorneys for debtor-in-possession. JUDGE OWEN, DATED: 8/7/74 COPY TO BANKRUPTCY JUDGE.
9/24/74	Filed MEMORANDUM AND ORDER (re: appeal from order of Bankruptcy J. Ryan)....the debtor has moved to dismiss the appeal as frivolous and on various technical procedural grounds. The debtor's motion is denied. The order of Bankruptcy J. Ryan is affirmed, so ordered. JUDGE DUFFY, DATED: 9/24/74. COPY TO JUDGE RYAN. BROWN FOLDER RETURNED: SEE MEMO-ORDER FOR FULL DETAILS.
3/24/77	Filed NOTICE OF APPEAL to District Court by Hoos & Co. from the Order of Bkcy. Judge dated 2/11/77. Ret: 5/3/77 at 10:30 in Room 506. f.. (77 Civ. 1428)
3/24/77	Filed Statement of Issues & Designation of Record on Appeal to District Court. f.. record on
3/24/77	Filed counter-statement of issues & designation of/appeal
5/3/77	Filed BRIEF OF CLAIMANT-APPELLANT Hoos & Co. on Appeal to the Dist. Court. Sub. by SULLIVAN & CROMWELL f..
5/9/77	Filed STIPULATION & ORDER, Adj. Appeal Hearing for 5/17/77, Claimant-appellant's brief shall be served by 4/29/77, Debtor-Appellant's by 5/11/77, any reply brief of Claimant-appellant shall be served by 5/13/77. So ordered Knapp, J. dated 5/3/77. Copy to Bkcy. Judge.
5/13/77	Filed Brief of Debtor-Appellee Dynamics Corp. of America on Appeal of the District Court. Sub. by Krause, Hirsch & Gross.
5/16/77	Filed REPLY BRIEF OF CLAIMANT-APPELLANT Hoos & Co. Sub. by Sullivan & Cromwell. f..
5/18/77	Filed Order dismissing appeal for the reasons stated in the oral Opinion delivered by this Court on 5/17/77. So ordered Stewart, J. dated 5/17/77. Copy to Bkcy Judge.
6/16/77	Filed NOTICE OF APPEAL to USCA by Hoos & Co., from the Order by the District Court dated 5/18/77. f.
7-15-77	Filed stipulation that copies of missing original documents, copies of which are attached to the stip. be made part of the record on appeal to U.S.C.A.

FORM BK 74-E
SEPT. 1972

UNITED STATES DISTRICT COURT

BANKRUPTCY DOCKET CONTINUATION

A TRUE COPY
RECORDED &
INDEXED
By [Signature]
Deputy Clerk

Letter of Theodore J. Lipp, September 8,
1972, and accompanying Proof of Claim Form

September 8, 1972

Mr. Stanley Tulchin, Secretary
Creditors' Committee
Stanley Tulchin Associates
350 Fifth Avenue
New York, New York 10001

Re: Dynamics Corporation of America
72 B 750

Dear Mr. Tulchin:

I am returning herewith our Bank's Proof of Claim with regard to our holding of Dynamics Corp. of America 7½% notes due 9/1/88 of which \$200,000 is held in our nominee name of Hoos and Co. while an additional \$100,000 is held in our nominee name of Jaquith & Co.

These notes are held in our capacity as Trustee or Custodian for various Pension funds. However, earlier this year we had held an additional \$200,000 which was transferred to a successor trustee, namely, Marine Midland Bank-Central, and are presently in their nominee of Carsec & Co. I am not a partner of Carsec & Co. but would appreciate your including this claim with ours, since the timing of your meeting Monday does not make it possible to get you their Proof of Claim.

Please include the following on your subsequent mailings: Mr. Ronald S. Hummel, Vice President, Marine Midland Bank-Central, 344 South Warren Street, Syracuse, New York 13201.

If you have any questions, please do not hesitate to call.

Sincerely,


Theodore J. Lipp
Pension Trust Officer

/bm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER
OF
DYNAMICS CORPORATION OF AMERICA

In Proceedings for an Arrangement Under
Chapter XI of the Bankruptcy Act.

No. 72-B-750

Debtor

STATE OF NEW YORK
COUNTY OF NEW YORK

Mr. THEODORE F. LIPP of No. 150 PARK AVENUE
in NEW YORK CITY County of NEW YORK State of NEW YORK
being duly sworn, deposes and says:

1. (a) INDIVIDUAL

That he hereinafter designates himself as claimant (or as appears below).

(b) CO-PARTNERSHIP

That he is a member of THE NEW YORK CITY CREDITORS' COMMITTEE, a co-partnership of No. 150 PARK AVENUE, NEW YORK, N.Y. 10015 hereinafter designated as claimant (or as appears below)

(c) CORPORATION

That he is the _____ of
a corporation organized and existing under the laws of the State of _____ and is
duly authorized to make this proof of claim on its behalf. Said corporation is hereinafter designated as the claimant.

2. That the above named debtor was at and before the filing by said debtor of the petition for an arrangement and still is
justly and truly indebted (or liable) to claimant in the sum of \$ 200,000.00

3. That the consideration of said debt (or liability) is as follows: Goods, ware, and merchandise sold and delivered to
the said debtor at the special instance and request of said debtor at the agreed price set forth in the annexed statement
which is made a part hereof.

4. That no part of said debt (or liability) has been paid. That there are no set-offs or counterclaims to said debt. That
claimant does not hold, and has not, nor has any person by his order, or to deponent's knowledge or belief for its use
had or received any security or securities for said debt (or liability). That this instrument upon which said debt is
founded is attached hereto. That no note or other negotiable instrument has been received for such account or any part
thereof ((or that the said debt is evidenced by a note (or other negotiable instrument), which is attached hereto)); that
no judgment has been rendered thereon.

POWER OF ATTORNEY

To: A Creditors' Committee of which Alex H. Ardrey, Jr. is Chairman,
Stanley Tulchin is Secretary and Levin & Weintraub and Otterbourg,
Steindler, Houston & Rosen, are Co-Counsel.

The undersigned does hereby authorize you, or any one of you, with full power of substitution, to attend all meetings
of creditors of the debtor aforesaid, and all adjournments thereof, at the places and times appointed by the court, and for the
undersigned and in the name of the undersigned, to vote for or against any proposal or resolution that may be then submitted
under the Act of Congress relating to bankruptcy, to vote for a trustee or trustees of the estate of the said debtor and for a
committee of creditors, ~~XXXXXX~~ and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court,
which may be held therein for any of the purposes aforesaid.

IN WITNESS WHEREOF the undersigned has hereunto signed his name and affixed his seal the
7th day of SEPTEMBER, 1973

Sworn to before me this 7th day
of SEPTEMBER, 1973, said subscriber
being known to me to be the person described in and who
signed and swore to the above instruments and duly acknowl-
edged that he executed them and was authorized to execute
them.

Notary Public

Notary Public, State of New York
No. 41-331-1000, expires 12/31/74
Term Expires March 31, 1975

Sign name of individual, partner or officer here

Sign name of firm here

Corporation officer seal here

(NOTE) Annex statement to this proof showing amount, date and year of sale of goods or services rendered.

Notice of Motion of Claimant
Hoos & Co., June 16, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

In the Matter	:	In Proceedings for
of	:	an Arrangement
DYNAMICS CORPORATION OF AMERICA,	:	No. 72 B 750
Debtor.	:	<u>NOTICE OF MOTION</u>

----- x

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavits of Theodore J. Lipp, sworn to June 11, 1975, and Ronald S. Hummel, sworn to June 5, 1975, the exhibits annexed thereto, and the memorandum of law dated June 16, 1975, the undersigned will move before the Honorable Edward J. Ryan, Referee in Bankruptcy, in Room 236 of the United States Courthouse, Foley Square, New York, New York, on the 1st day of July, 1975, at 10 o'clock in the forenoon, or as soon thereafter as applicant may be heard, for an order allowing the claim in respect to \$200,000 principal amount of notes of debtor due 9/1/88, registered in the name of Hoos & Co. and held by the Carrier Corporation Retirement Trust, and for such other and further relief as may be just and proper.

Dated: New York, New York
June 16, 1975

Yours, etc.,

SULLIVAN & CROMWELL

By

John Dickey
(A Member of the Firm)
David B. Rigney
David B. Rigney

Attorneys for Applicant Hoos & Co.
48 Wall Street,
New York, New York 10005.
(212) 952-8100

To: LEVIN & WEINTRAUB, ESQS.
225 Broadway
New York, New York 10007

and

OTTERBOURG, STEINDLER, HOUSTON & ROSEN, ESQS.
230 Park Avenue
New York, New York 10017

Co-Counsel to the Official Creditors' Committee

KRAUSE, HIRSCH & GROSS, ESQS.
Attorneys for the Debtor
41 East 42nd Street
New York, New York 10017.

Affidavit of Theodore J. Lipp, June 11 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In the Matter :
of : In Proceedings for
DYNAMICS CORPORATION OF AMERICA, : an Arrangement
: No. 72 B 750
Debtor. :

-----x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

THEODORE J. LIPP, being duly sworn, deposes and
says:

1. I have been continuously employed by Marine Midland Bank-New York ("Marine Midland-New York") since 1964 and am currently an Assistant Vice President thereof and a partner of Hoos & Co., a nominee of Marine Midland-New York. I make this affidavit in support of the application of Hoos & Co. for allowance in this proceeding of the claim in respect of \$200,000 principal amount of the notes of debtor, due 9/1/88, held by the Carrier Corporation Retirement Trust ("the Carrier Trust").

2. Until the end of 1971, Marine Midland-New York and Marine Midland Bank-Central ("Marine Midland-Central") served as co-trustees of the Carrier Corporation Retirement Trust which held \$200,000 principal amount of the notes of debtor, due 9/1/88, registered in the name of Hoos & Co. ("the Carrier notes"). Marine Midland-New York acquired \$500,000 of the 9/1/88 notes in a private placement in September 1968, \$200,000 of which were held in the Carrier

Trust and the remaining \$300,000 in other trusts and custodian accounts. Ten purchasers (including Marine Midland-New York) participated in this private placement.

3. In January 1972, Marine Midland-New York ceased acting as co-trustee of the Carrier Trust and thereupon Marine Midland-Central became the sole trustee. In the early months of 1972, the assets of the trust were, at my direction, physically delivered to Marine Midland-Central and, for the most part, the securities in the trust were re-registered in the name of Marine Midland-Central's nominee, Carsec & Co.

4. On August 2, 1972, the debtor filed its petition for an arrangement under Chapter XI of the Bankruptcy Act, which was referred to Hon. Edward J. Ryan, Referee in Bankruptcy. On August 8, 1972 I attended a meeting of Creditors of the debtor. On September 7 or September 8, 1972 I received a letter, dated August 23, 1972, from Stanley Tulchin, Secretary of the Creditors Committee of the debtor. The letter (a copy of which is attached as Exhibit A) stated that a meeting "of the larger Creditors" of the debtor had been held on August 8, 1972, and that "to safeguard Creditors' rights and facilitate negotiations with the debtor, a committee representing various creditor groups including banks, insurance companies and trade creditors" was elected by those creditors present. The letter stated:

"The Committee requests your executing the enclosed Proof of Claim in order that your claim may be filed with the Referee. ... There will be no charge for filing your claim by the Committee or any of its counsel or representatives. ..."

The letter further requested that the proofs of claim be returned to the office of the Committee's Secretary "promptly so that we will have it in time for the next meeting scheduled for September 11 before the Referee in Bankruptcy."

5. By letter of September 8, 1972 (a copy of which is attached as Exhibit B), I replied to Mr. Tulchin's letter of August 23, 1972, advising him that I was "returning herewith our Bank's Proof of Claim with regard to our holding Dynamics Corp. of America 7-1/2% notes, due 9/1/88 of which \$200,000 is held in our nominee name of Hoos & Co. while an additional \$100,000 is held in our nominee name of Jaquith & Co. These notes are held in our capacity as Trustee or Custodian for various Pension funds." I further advised Mr. Tulchin that "earlier this year we had held an additional \$200,000" of such notes of debtor which were "transferred to a successor trustee, namely Marine Midland-Central, and are presently in their nominee of Carsec & Co." I advised Mr. Tulchin that "I am not a partner of Carsec & Co. but would appreciate your including this claim with ours, since the timing of your meeting Monday does not make it possible to get you their Proof of Claim."

6. In so advising Mr. Tulchin that the notes were registered in the name of Carsec & Co., I believed that such re-registration had occurred after the physical delivery of the Carrier notes to Marine Midland-Central earlier that year, but I recently became aware that in fact such re-registration had not then occurred and that to this day the Carrier notes have remained registered in the name of Hoos & Co. Although mistaken as to the current registration of

the Carrier notes in September 1972, I intended by my letter of September 8 to include the claim to the Carrier notes among those claims presented at the First Meeting of the Creditors Committee before the Referee on September 11, 1974.

7. As set forth in the affidavit of Stanley Tulchin herein, dated December 9, 1974, proofs of claim received in response to his letter to creditors "were sent to the Bankruptcy Court for filing." (Affidavit of Stanley Tulchin dated December 9, 1974, par. 8, hereinafter the "Tulchin affidavit".) At the First Meeting of Creditors before the Referee on September 11, 1972, Mr. Tulchin was elected Tentative Trustee. (Tulchin affidavit, par. 11.)

8. In my letter of September 8, I further requested that Mr. Tulchin include on the mailing list of the Creditors Committee Mr. Ronald S. Hummel, Vice President, Marine Midland-Central, 344 South Warren Street, Syracuse, New York. Following the delivery of my letter of September 8, 1972, I understood that the Creditors Committee was aware of the total claims of Marine Midland-New York and Marine Midland-Central in respect of the \$200,000 Carrier notes and the additional \$300,000 of such notes held in other custodian and trust accounts of Marine Midland-New York. I also believed that a proof of claim confirming my letter of September 8, 1972 had been duly filed by Marine Midland-Central, but a search of the records of Marine Midland-New York and Marine Midland-Central has failed to disclose a copy of a formal proof of claim filed by it.

9. By letter of December 31, 1973, Patrick Dorne, Controller of the debtor, requested from Marine Midland-

New York certain information "regarding our indebtedness to you", in connection with "the examination of our accounts as at December 31, 1973 which is being made by S.D. Leidesdorf & Co." (A copy of this letter is attached as Exhibit C.)

By letter of March 12, 1974, Mr. Fred W. Hildum, Trust Operations Officer of Marine Midland-New York, replied to the December 31, 1973 letter of Mr. Dorme, stating that the notes of the debtor held by Marine Midland-New York were \$200,000 7-1/2% notes due 9/1/88, registered in Hoos & Co., and \$100,000 7-1/2% notes due 9/1/88 registered in Jaquith & Co. (A copy of Mr. Hildum's letter of March 12, 1974 is attached as Exhibit D.) Marine Midland-New York, however, was never advised by the debtor or by S.D. Leidesdorf that there were then registered in the name of Hoos & Co. \$400,000 7-1/2% notes due 9/1/88, rather than only \$200,000 of such notes registered in Hoos & Co., as set forth in the March 12, 1974 letter of Mr. Hildum.

10. Bankers Trust Company replaced Marine Midland-Central as trustee of the Carrier Trust in September 1973 and thereafter the assets of the Trust, including the Carrier notes registered in the name of Hoos & Co., were physically delivered by Marine Midland-Central to Bankers Trust. On information and belief, Bankers Trust unsuccessfully attempted to have registration of the Carrier notes transferred to its nominee, and has asserted that because of its inability to re-register the notes, it did not receive notice in November 1974 that anyone who had not previously filed a proof of claim could do so by December 27, 1974. I am advised that

Bankers Trust did not file a proof of claim in regard to the \$200,000 Carrier notes either before or after December 27, 1974. In April 1975, Bankers Trust asked Marine Midland-New York, through its nominee Hoos & Co., to seek allowance of the claim in regard to the notes. The present application is made pursuant to such request, for the beneficiaries of the Carrier Trust.

Theodore J. Lip

Sworn to before me this

11th day of June, 1975.

Julia O'Neill
Notary Public

JULIA O'NEILL
Notary Public, State of New York
No. 31-255633
Qualified in New York County
Commission Expires March 30, 1977

Exhibits to the Affidavit of Theodore J. Lipp



STANLEY
TULCHIN
ASSOCIATES

A 12
6500 WILSON BLVD. SUITE 200
CHICAGO, ILL. 60631
3440 THE PARK DRIVE, SUITE 200
LOS ANGELES, CALIF. 90005

A

CREDIT AND COLLECTION CONSULTANTS • 350 THE AVENUE • NEW YORK, N.Y. 10001 • (212) 561-3740
STANLEY TULCHIN
PRESIDENT

August 23, 1972

TO THE CREDITORS OF:

DYNAMICS CORPORATION OF AMERICA
72 B 750

Gentlemen:

A meeting of the larger Creditors of the above named company was held at the Biltmore Hotel in New York City on August 8, 1972.

Andrew Lozyniak, President, and other principal officers of the Debtor were present as well as their counsel who reported that on August 2, a Petition for an Arrangement under Chapter XI, of the Bankruptcy Act, had been filed in the United States District Court, Southern District of New York, and the matter referred to the Honorable Edward J. Ryan, Referee in Bankruptcy.

Mr. Lozyniak summarized the company's past history and its present difficulties. The problems discussed were inherent weaknesses in some of the divisions, as well as substantial changes in procedures in procurement policies of the Defense Department which resulted in termination of contracts for convenience by the U.S. Government amounting to approximately \$20,000,000.

Mr. Lozyniak stated that an intensive evaluation of each operating unit and an assessment of its actual potential contribution to the company's stability was undertaken and the following steps are now being implemented:

- 1) Discontinuance of product lines which are unprofitable or marginal.
- 2) The consolidation of operations from twenty divisions to twelve.
- 3) Reduction of personnel from 5,500 to 3,800.
- 4) Realignment of corporate management staff to improve administration.

- 5) Improvement of market mix from defense products to commercial and consumer product lines.

A 13

A

Mr. Lozyniak stated that there has been a reversal in the down-trend of sales and that the company will show a profit for the first six months of 1972. He stated that the company was not and is not insolvent. A summary of Assets and Liabilities is attached to this report indicating assets of \$79,617,925. against liabilities of \$62,275,337. The company can avail itself of a tax net operating loss carried forward of approximately \$7,000,000.

Lending institutions indicated their willingness to lend the Debtor-in-Possession up to \$3,000,000. for its immediate needs on a secured basis and subsequent to the meeting, the loan was authorized by the Court.

To safeguard Creditors' rights and facilitate negotiations with the Debtor, a Committee representing various credit groups including banks, insurance companies and trade creditors, was elected by those Creditors present.

The Committee selected counsel and an independent accountant, S.D. Leidesdorf & Co., to conduct an examination.

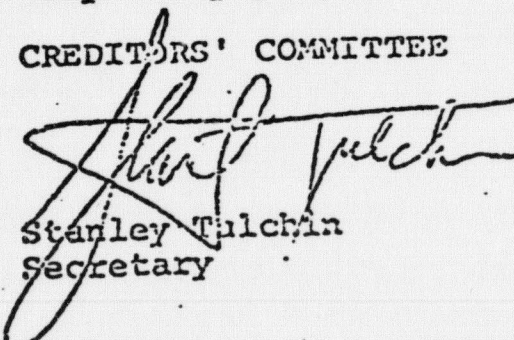
The Committee requests your executing the enclosed Proof of Claim in order that your claim may be filed with the Referee. It will be voted for a tentative trustee and to make the undersigned Committee official. It will not be voted in connection with any plan of arrangement. There will be no charge for filing your claim by the Committee or any of its counsel or representatives.

Please return the Proof of Claim to the Committee's Secretary, Stanley Tulchin, 350 Fifth Avenue, New York, New York 10001 promptly so that we will have it in time for the next meeting scheduled for September 11 before the Referee in Bankruptcy.

It is the intention of the Creditors' Committee to keep you apprised of all future developments.

Very truly yours,

CREDITORS' COMMITTEE


Stanley Tulchin
Secretary

ST/ny
enc

CREDITORS' COMMITTEE

A 14

A

Chairman	Alex H. Ardrey, Jr.	The Chase Manhattan Bank, N.A.
	J. Crosby Brown, Jr.	First Pennsylvania Banking & Trust Co.
	W. Kenneth Rees	Northeastern National Bank of Penn.
	Joseph P. Walker	State National Bank of Connecticut
	Robert Joyal	Massachusetts Mutual Life
	Raymond M. Sisk	Connecticut General Life
	Mario A. Ellero	National Life Insurance Company
	Rex J. Bates	State Farm Insurance Companies
	Peter D. Laird	New England Mutual Life
	R. Murakami	Shinyei Co., Inc.
	Frank J. Pfister	Central Steel & Wire Company
	George Adams	General Electric Corporation
	Thomas Zoda	Varian Associates
	Thomas N. McGowen, Jr.	Winnemac Steel
	William Zinderman	Park Electrochemical Corporation
Secretary to Committee		Stanley Tulchin 350 Fifth Avenue New York, N.Y. 10001
Co-Counsel to Committee		Levin & Weintraub 225 Broadway New York, N.Y. 10007
		Otterbourg, Steindler, Houston & Rosen 230 Park Avenue New York, N.Y.

A 15

DYNAMICS CORPORATION OF AMERICA and its Divisions
Estimated Summary of
Assets and Liabilities as at
June 30, 1972

A

ASSETS

Cash	\$ 302,204
Accounts Receivable (less allowance for doubtful accounts)	15,047,611
Unbilled costs on Government Contracts	7,773,767
Inventories	
Raw Material	11,577,169
Work in Process	12,578,939
Finished Goods	6,538,730
Prepayments deposits and other	\$30,694,838 2,462,406
Property Plant & Equipment	
Buildings	5,031,921
Machinery, equipment and fixtures	15,043,334
Leasehold improvements	141,766,594
	21,841,849
Less accumulated depreciation & amortization	11,310,804
	10,531,045
Land	1,576,216
	\$12,107,261
Other Assets	
Unliquidated claims	4,117,333
Cost over book value on acquisitions	1,595,916
Licenses, Patents, and trademarks	375,209
Deferred charges & miscellaneous assets	2,248,662
	\$ 8,337,120
Investment in subsidiaries	2,692,718
	\$79,617,925

LIABILITIES

Notes Payable to Banks	17,799,000
Loans Payable to Insurance Companies	19,000,000
Accounts Payable - trade & other	12,136,148
Accrued Liabilities	3,273,342
Deferred Federal Income taxes	1,916,410
Foreign debt	412,646
Contingent Liability	2,904,173
Inter-company payable due subsidiaries	4,833,663
	\$62,275,387

The above assets are located at the premises set forth on Schedule C and annexed hereto and made a part hereof.

Debtor has cash on deposit in the banking institutions which lists are attached hereto and made a part hereof.

B

September 8, 1972

Mr. Stanley Tulchin, Secretary
Creditors' Committee
Stanley Tulchin Associates
350 Fifth Avenue
New York, New York 10001

Re: Dynamics Corporation of America
72 B 750

Dear Mr. Tulchin:

I am returning herewith our Bank's Proof of Claim with regard to our holding of Dynamics Corp. of America 7½% notes due 9/1/82 of which \$200,000 is held in our nominee name of Hoos and Co. while an additional \$100,000 is held in our nominee name of Jaquith & Co.

These notes are held in our capacity as Trustee or Custodian for various Pension funds. However, earlier this year we had held an additional \$200,000 which was transferred to a successor trustee, namely, Marine Midland Bank-Central, and are presently in their nominee of Carsec & Co. I am not a partner of Carsec & Co. but would appreciate your including this claim with ours, since the timing of your meeting Monday does not make it possible to get you their Proof of Claim.

Please include the following on your subsequent mailings: Mr. Ronald S. Hummel, Vice President, Marine Midland Bank-Central, 344 South Warren Street, Syracuse, New York 13201.

If you have any questions, please do not hesitate to call.

Sincerely,


Theodore J. Lipp
Pension Trust Officer



DYNAMICS CORPORATION OF AMERICA

601 FIFTH AVENUE, NEW YORK, NEW YORK 10017

TELEPHONE 601-3000

D.I.P.

December 31, 1973

Marine Midland Bank
250 Park Avenue
New York, N. Y. 10017

Please refer to
File No. 2315
when replying

Attention: Mr. Fred W. Hildum

Gentlemen:

In connection with the examination of our accounts as at December 31, 1973, which is being made by S. D. Leidesdorf & Co., Certified Public Accountants, 100 East 42nd Street, New York, N.Y. 10017, we shall appreciate it if you will furnish them with the following information regarding our indebtedness to you:

1. Description of Note.
2. Date of Note.
3. Original face amount of Note.
4. Unpaid balance of principal as at December 31, 1973.
5. Requirements as to amortization of principal.
6. Annual rate of interest and basis of computation.
7. Amount of accrued interest due to you and/or date to which interest has been paid as at December 31, 1973.
8. Names of obligors on the Note.
9. Names of endorsers or guarantors on the above.
10. Special provisions affecting payments to be made on principal or interest.
11. Details of any changes made in the terms of the Note since August 1, 1972.
12. Description and amount of collateral, including details of security agreements, financing statements, mortgages, liens, etc., for Note.
13. Indicate whether the terms of the Note, as presently constituted, have been fully complied with.

DYNAMICS CORPORATION OF AMERICA

-2-

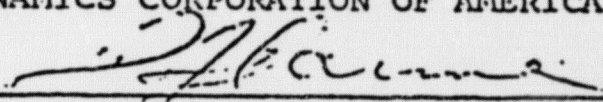
Please send your reply directly to our accountants,
in the enclosed stamped, addressed envelope.

We shall be grateful for your cooperation in this
matter.

Very truly yours,

DYNAMICS CORPORATION OF AMERICA

By


Patrick J. Dome - Controller

PJD/jc

A 19 D

MARINE MIDLAND BANK
NEW YORK

250 PARK AVENUE • NEW YORK, N. Y. 10017

(212) 903-8300

March 12, 1974

U

S. D. Leidesdorf & Company
125 Park Avenue
New York, New York 10017

Re: File No. 2315
Dynamics Corp. of America

Gentlemen:

This letter is in reply to a letter received from Dynamics Corporation of America requesting the following information. A copy of their letter is enclosed.

1. 7½% Note due September 1, 1988, under Note Agreements dated 9/1/68.
2. Registered
2 X \$30,000 n/o Hoos & Co., nominee of Marine Midland Bank - NY dated 9/17/68
1 X 100,000 n/o Jaquith & Co., nominee of Marine Midland Bank - NY dated 3/1/71, originally 9/17/68 note in n/o Hoos & Co.
3. 100,000 Hoos & Co.
100,000 " "
100,000 Jaquith & Co.
4. 300,000 unpaid balance of principal 12/31/73.
5. Payable 15,000/yr. 9/1/73 thru 9/1/87.
6. 7½% on 360 day year payable 9/1 and 3/1 semi-annually.
7. Int. to 3/1/72 pd.
8. Dynamics Corp. of America
9. None
10. See Agreement
11. None
12. None
13. No

Very truly yours,



Fred W. Hildum
Trust Operations Officer

Encl.

bcc: Messrs: T. J. Lipp
R. N. Thicke
R. S. Maxwell
Patrick J. Dorme - Dynamics Corp. of America

Affidavit of Ronald S. Hummel, June 5, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

In the Matter	:	
of	:	In Proceedings for
	:	an Arrangement
DYNAMICS CORPORATION OF AMERICA,	:	No. 72 B 750
	:	
Debtor.	:	

----- x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

RONALD S. HUMMEL, being duly sworn, deposes and says:

1. I have been continuously employed by Marine Midland Bank-Central ("Marine Midland-Central") since 1962 and I am currently a Vice President and Trust Officer thereof. I make this affidavit in support of the application of Hoos & Co., the nominee of Marine Midland Bank-New York ("Marine Midland-New York") for allowance of the claim in respect to \$200,000 principal amount of the notes of debtor, due 9/1/88, held by the Carrier Corporation Retirement Trust ("the Carrier Trust").

2. In the early months of 1972, Marine Midland-New York transferred the assets of the Carrier Trust, including \$200,000 principal amount of the notes of the debtor, due 9/1/88, registered in the name of Marine Midland-New York's nominee, Hoos & Co., ("the Carrier notes") to Marine Midland-Central, the successor corporate trustee. Following such transfer, Marine Midland-Central attempted to have the Carrier Notes re-registered in its nominee, Carsec & Co., and I then understood that as a result of this effort, the re-registration of the Carrier notes had

been effected. However, I have subsequently determined that our effort to re-register the Carrier notes was unsuccessful and that these notes have remained registered in the name of Hoos & Co.

3. On Friday, September 8, 1972, I received a telephone call from Mr. Theodore Lipp, then a Pension Trust Officer of Marine Midland-New York, who advised me that he had received a letter from Mr. Stanley Tulchin, Secretary of the Creditors Committee, requesting that proofs of claim be transmitted to him in time for filing with the Referee at the First Meeting of Creditors on Monday, September 11, 1972. It was not possible for me to complete, and deliver from Syracuse to New York City, a fully executed proof of claim before the First Meeting of the Creditors Committee on September 11, 1972, and I therefore asked Mr. Lipp to include a claim to the Carrier notes with the proofs of claim submitted in regard to additional notes of the debtor held in other custodian and trust accounts of Marine Midland-New York.

4. On or about September 11, 1972 I received a copy of Mr. Lipp's September 8, 1972 letter to Mr. Tulchin. On September 14, 1972 I wrote to Mr. Tulchin to confirm Marine Midland-Central's claim in respect of the Carrier notes and to request that Marine Midland-Central be placed on the mailing list of the Creditors Committee. (A copy of my letter of September 14, 1972 is attached as Exhibit A.) Beginning on or about October 5, 1972, I regularly received communications

from the Creditors Committee, and fully understood and believed that the claim to the Carrier notes had been filed and was recognized by the Creditors Committee.

Ronald J. Hummel

Sworn to before me this

5th day of June, 1975.

Michael S. Weir

Notary Public

MICHAEL WEIR
Notary Public, State of New York
Residing in New York County
New York Co. C.R. No. 31-725/125
Commission Expires March 30, 1976

Exhibit to the Affidavit of Ronald S. Hummel

✓ S. A.
INDEXED FILE
FILE
ADMIN. FILE
NEW BUS. FILE
DATE TO:
9/14/72

September 14, 1972

Mr. Stanley Tulchin, Secretary
Creditors' Committee
Stanley Tulchin Associates
350 Fifth Avenue
New York, New York 10001

Re: Dynamics Corporation of America
72 B 750

Dear Mr. Tulchin:

By letter dated September 8, 1972, Mr. Theodore J. Lipp, Pension Trust Officer of our New York Bank advised you that we hold \$200,000 of the 7 1/2% Notes due 9/1/88. They currently are registered in our Nominee which is Carsec & Co.

Please make certain that my name appears on all of your subsequent mailings as it is important that we be appraised of all future developments.

Sincerely yours,

Ronald S. Hummel
Vice President
& Trust Officer

RSE:k

Affidavit of Patrick J. Dorne,
September 24, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In the Matter
of
DYNAMICS CORPORATION OF AMERICA,
Debtor.
----- x

In Proceedings for
an Arrangement

No. 72 B 750

STATE OF *Connecticut*)
COUNTY OF *Fairfield*) ss.:

PATRICK J. DORME, being duly sworn, deposes and says on
information and belief that:

I have been continuously employed by Dynamics Corporation
of America ("DCA") since the spring of 1968 and am currently Treas-
urer of DCA.

I am fully familiar with all the facts and circumstances
hereinafter set forth as well as the allegations made by claimant
which are assumed herein to be true, and make this answering affi-
davit in order to dismiss the motion of HOOS & CO. on the grounds
that it fails to state a claim against the debtor upon which re-
lief can be granted.

The above-entitled proceeding was brought by HOOS & CO.
over six (6) months after the entry of an order confirming the
plan of the debtor. It seeks the allowance of an untimely pur-
ported claim in respect of \$200,000 principal amount of the notes
of the debtor, due 9/1/88, held on information and belief by Car-
rier Corporation Retirement Trust ("The Carrier Trust").

The above-entitled proceeding was commenced by the service
of a notice of motion with two affidavits and exhibits annexed, a
copy of which motion is annexed hereto as Exhibit "A", upon Krause,
Hirsch & Gross, attorneys for the debtor, on the 17th day of June,
1975.

On information and belief, until the end of 1971, Marine Midland-New York and Marine Midland-Central served as Co-Trustees of the Carrier Trust which held \$200,000 principal amount of notes in question.

On information and belief, Marine Midland-New York acquired \$500,000 of the notes in a private placement in September 1968. The \$200,000 in issue were held in the Carrier Trust and the remaining \$300,000 was held in other and custodian accounts, in which ten (10) purchasers, including Marine Midland-New York, participated in this private placement. (Lipp Affidavit, par. 2).

On information and belief, in early 1972, Marine Midland-New York ceased acting as Co-Trustees of the Carrier Trust. Thereupon, Marine Midland-Central became the sole trustee. (Lipp Affidavit, par. 3.)

In these earlier months of 1972, the assets were, at the direction of Theodore J. Lipp, formerly the Pension Trust Officer and presently an Assistant Vice President of Marine Midland-New York and Partner of HOOS & CO., physically delivered to Marine Midland-Central and, for the most part, the securities in the Trust were re-registered in the name of Marine Midland-Central's nominee, Carsec & Co. (Lipp Affidavit, par. 3)

On August 2, 1972, the debtor filed its petition under Chapter XI, which was referred to the Honorable Edward J. Ryan, Bankruptcy Judge.

On August 8, 1972, Lipp attended a meeting of creditors of the debtor. (Lipp Affidavit, par. 4).

Lipp received a letter dated August 23, 1972 from Stanley Tulchin, Secretary of the Creditors' Committee of the debtor. The letter, Exhibit "B", stated that a meeting of the larger creditors had been held on August 8, 1972, a meeting Lipp attended, and to safeguard creditors' rights and facilitate negotiations with the debtor, a Committee representing various creditors' groups was elected by those present. The letter continued:

"The Committee requests your executing the enclosed proof of claim in order that your claim may be filed with the Referee. It will be voted for a tentative trustee and to make the undersigned Committee official. It will not be voted in connection with any plan of arrangement. There will be no charge for filing of claim by the Committee or any of its counsel or representatives."

The letter further requested that the proofs of claim be returned to the office of the Creditors' Secretary "promptly so that we will have it in time for the next meeting scheduled on September 11, 1972 before the Referee in Bankruptcy".

By letter of September 8, 1972, Exhibit "C", Lipp replied to Tulchin's letter of August 23, 1972 advising him that:

"I am returning herewith our Bank's proof of claim with regard to our holding Dynamics Corp. 7-1/2% Notes due 9/1/88, of which \$200,000 is held in our nominee's name, HOOS & CO., while an additional \$100,000 is held in our nominee's name, Jaquith & Co."

The proof of claim for these separate notes are not in issue in this case and in fact were paid. (See confirmation schedule, Exhibit "D". (Emphasis mine.)

"These notes are held in our capacity as Trustee or Custodian for various pension funds. However, earlier this year we held an additional \$200,000 which was transferred to a successor trustee, namely, Marine Midland Bank-Central, and are presently in their nominee, Carsec & Co. I am not a Partner in Carsec & Co. but would appreciate your including this claim with ours, since the timing of your meeting Monday does not make it possible to get you their proof of claim." (Emphasis mine).

No written proof of claim for these notes in issue was attached thereto or subsequently sent to Tulchin or the Court by Mr. Lipp. Claimant has no record of a proof of claim being filed. (Lipp affidavit, par. 9). (Emphasis mine.)

In the letter of September 8, 1972, Lipp further requested that Tulchin include on the mailing list of the Creditors' Committee, Ronald Hummel, Vice President of Marine Midland-Central.

Mr. Hummel wrote on September 14, 1972 to Mr. Tulchin, Exhibit "E", that he understood that Mr. Lipp "advised you that we hold \$200,000 of the 7-1/2% notes, due 9/1/88. These currently are registered in our nominee, which is Carsec & Co."

"Please make certain that my name appears on all of your subsequent mailings as it is important that we be apprised of all future developments."

This reaffirms that no proof of claim was filed, that Lipp merely advised Tulchin that Hummel had possession of notes, and that Lipp at the time felt that he had no authority except to ask that notice of subsequent Chapter XI meetings be forwarded to Mr. Hummel.

It is quite clear that the misguided attempt (Lipp Affidavit, par. 6) to have the September 8, 1972 letter declared a proof of claim is a sham and cover-up for neglect and is an afterthought.

At the first meeting of Creditors on September 11, 1972, Mr. Tulchin was elected standby Trustee and the Unofficial Creditors' Committee was formally elected.

Proofs of claim received in response to Tulchin's letter to creditors were sent to the Bankruptcy Court for filing, Exhibit "F" (Tulchin's Application for Allowances of December 9, 1974, par. 8).

No proof of claim is on file with the Court, nor is there any record of a proof of claim in this matter ever being received. A search of the records of Marine Midland-New York and Marine Midland-Central has failed to disclose a copy of a proof of claim for the \$200,000 Carrier notes. (Lipp Affidavit, par. 8).

A list of creditors of the debtor was filed by Krause, Hirsch & Gross on or about October 1972.

Schedules were filed and Marine Midland Grace and Trust, whose nominees are Hoos & Co. and Jaquith & Co., was scheduled as a creditor for \$500,000, plus interest for an aggregate total of \$515,625.00, Exhibit "G".

On information and belief, as of September 30, 1973, Bankers Trust Company replaced Marine Midland Bank-Central as Trustee

of the Carrier Trust and the assets of the Trust (including the Carrier notes registered in the name of Hoos & Co.) were physically delivered to Bankers Trust. On information and belief, Bankers Trust claims to have unsuccessfully attempted to have registration of the notes transferred to its nominee. Bankers Trust, prior to confirmation and after confirmation, has not filed a proof of claim to the Carrier notes in question. (Lipp Affidavit, par. 10) (emphasis mine)

By letter of December 31, 1973, Exhibit "H", your deponent, as Controller of the Debtor, at the behest of an accountant selected by the Committee, S.D. Leidesdorf & Co., requested from Marine Midland-New York specific "information regarding our indebtedness to you" in connection with the examination of our accounts. By letter of March 12, 1974, Exhibit "I", Mr. Fred W. Hildum, Trust Operation Officer of Marine Midland-New York, reaffirmed Lipp's letter of September 8, 1972, by stating that the Debtor owed Marine Midland-New York \$300,000 in specific notes (for which a separate proof of claim has been filed, allowed and paid Exhibit "D"). No mention whatsoever is made of the \$200,000 in Carrier notes which is the subject matter of this proceeding. (emphasis mine)

It is clear that in the negotiations between the debtor and its creditors to arrive at a feasible plan that is in the best interests of all creditors, the debtor clearly relied on the number and amount of proofs of claim filed by creditors. Funding of a plan required delicate negotiations, often based on the amount of debt that would have to be paid off prior to the company's emergence from Chapter XI.

At no time prior to the November 27, 1974 order of confirmation or within thirty (30) days after the date of mailing of the notice of confirmation to creditors was a proof of claim in regard to these notes filed. Over six (6) months after

confirmation, on June 16, 1975, Hoos & Co. makes this motion.

It is respectfully submitted that in failing to file a proof of claim, Hoos & Co. waived any rights it might otherwise have had herein. By virtue of these omissions, Hoos & Co. has absolutely no claim in this matter to a distribution.

No previous application for the relief herein prayed for has been made.

WHEREFORE, deponent respectfully requests that the Court deny the motion of Hoos & Co., applicant herein, and for such other relief as may be just and proper.

Patrick J. Dorne
PATRICK J. DORNE

Leona A. Cebelski
Sworn to before me this
24 day of September, 1975.

LEONA A. CEBELENSKI
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1979

Exhibits to the Affidavit of Patrick J. Dorme,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

In the Matter	:	In Proceedings for
of	:	an Arrangement
DYNAMICS CORPORATION OF AMERICA,	:	No. 72 B 750
Debtor.	:	<u>NOTICE OF MOTION</u>

----- x

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavits of Theodore J. Lipp, sworn to June 11, 1975, and Ronald S. Hummel, sworn to June 5, 1975, the exhibits annexed thereto, and the memorandum of law dated June 16, 1975, the undersigned will move before the Honorable Edward J. Ryan, Referee in Bankruptcy, in Room 236 of the United States Courthouse, Foley Square, New York, New York, on the 1st day of July, 1975, at 10 o'clock in the forenoon, or as soon thereafter as applicant may be heard, for an order allowing the claim in respect to \$200,000 principal amount of notes of debtor due 9/1/88, registered in the name of Hoos & Co. and held by the Carrier Corporation Retirement Trust, and for such other and further relief as may be just and proper.

Dated: New York, New York
June 16, 1975

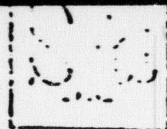
Yours, etc.,

SULLIVAN & CROMWELL

By John Dickey
(A Member of the Firm)

David B. Rigney
David B. Rigney

Attorneys for Applicant Hoos & Co.
48 Wall Street,
New York, New York 10005.
(212) 952-8100



TULCHIN
ASSOCIATES

STANLEY TULCHIN ASSOCIATES
3400 VENTURE BUILDING
LOS ANGELES, CALIFORNIA 90007
A 31

CREDIT AND COLLECTION CONSULTANTS • 350 FIFTH AVENUE • NEW YORK, N.Y. 10001 • (212) 564-3740

STANLEY TULCHIN
PRESIDENT

B

August 23, 1972

TO THE CREDITORS OF:

DYNAMICS CORPORATION OF AMERICA

72 B 750

7/27/72
1007-1510

200

200-1000
Conrad

Gentlemen:

A meeting of the larger Creditors of the above named company was held at the Biltmore Hotel in New York City on August 8, 1972.

1007-1510
Jag

Andrew Lozyniak, President, and other principal officers of the Debtor were present as well as their counsel who reported that on August 2, a Petition for an Arrangement under Chapter XI, of the Bankruptcy Act, had been filed in the United States District Court, Southern District of New York, and the matter referred to the Honorable Edward J. Ryan, Referee in Bankruptcy.

Mr. Lozyniak summarized the company's past history and its present difficulties. The problems discussed were inherent weaknesses in some of the divisions, as well as substantial changes in procedures in procurement policies of the Defense Department which resulted in termination of contracts for convenience by the U.S. Government amounting to approximately \$20,000,000. Mr. Lozyniak stated that an intensive evaluation of each operating unit and an assessment of its actual potential contribution to the company's stability was undertaken and the following steps are now being implemented:

- 1) Discontinuance of product lines which are unprofitable or marginal.
- 2) The consolidation of operations from twenty divisions to twelve.
- 3) Reduction of personnel from 5,500 to 3,800.
- 4) Realignment of corporate management staff to improve administration.

Mr. Lowinski stated that there has been a reversal in the downward trend of sales and that the company will show a profit for the first six months of 1972. He stated that the company was not and is not insolvent. A summary of Assets and Liabilities is attached to this report indicating assets of \$79,617,925. against liabilities of \$62,275,387. The company can avail itself of a tax net operating loss carried forward of approximately \$7,000,000.

Lending institutions indicated their willingness to lend the Debtor-in-Possession up to \$3,000,000. for its immediate needs on a secured basis and subsequent to the meeting, the loan was authorized by the Court.

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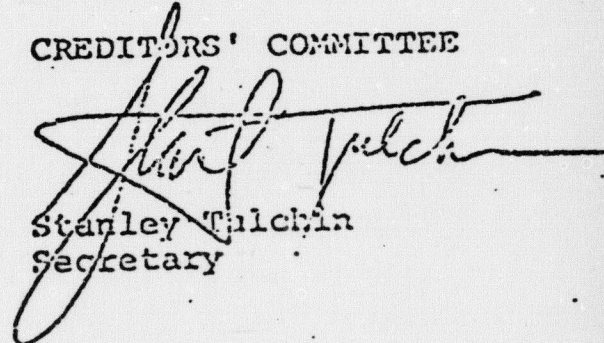
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Please return the Proof of Claim to the Committee's Secretary, Stanley Tulchin, 250 Fifth Avenue, New York, New York 10001 promptly so that we will have it in time for the next meeting scheduled for September 11 before the Referee in Bankruptcy.

It is the intention of the Creditors' Committee to keep you apprised of all future developments.

Very truly yours,

CREDITORS' COMMITTEE


Stanley Tulchin
Secretary

ST/ny
enc

Estimated Summary of
Assets and Liabilities as at
June 30, 1972

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Deferred Federal Income taxes	1,916,410
Foreign debt	412,646
Contingent Liability	2,904,173
Inter-company payable due subsidiaries	4,833,668
	\$62,275,387

The above assets are located at the premises set forth on Schedule C and annexed hereto and made a part hereof.

Debtor has cash on deposit in the banking institutions which lists are attached hereto and made a part hereof.

Dynamics Corporation of America

By Andrew Jazyniak
Andrew Jazyniak

Chairman Alex H. Ardrey, Jr.
 J. Crosby Brown, Jr.
 W. Kenneth Rees
 Joseph P. Walker
 Robert Joyal
 Raymond M. Sisk
 Mario A. Ellero
 Rex J. Bates
 Peter D. Laird
 R. Murakami
 Frank J. Pfister
 George Adams
 Thomas Zoda
 Thomas N. McGowen, Jr.
 William Zinderman

The Chase Manhattan Bank, N.A.
 First Pennsylvania Banking & Trust Co.
 Northeastern National Bank of Penn.
 State National Bank of Connecticut
 Massachusetts Mutual Life
 Connecticut General Life
 National Life Insurance Company
 State Farm Insurance Companies
 New England Mutual Life
 Shinyei Co., Inc.
 Central Steel & Wire Company
 General Electric Corporation
 Varian Associates
 Winnemac Steel
 Park Electrochemical Corporation

Secretary to Committee

Stanley Tulchin
 350 Fifth Avenue
 New York, N.Y. 10001

Co-Counsel to Committee

Levin & Weintraub
 225 Broadway
 New York, N.Y. 10007

Otterbourg, Steindler, Houston & Rose
 230 Park Avenue
 New York, N.Y.

September 8, 1972

Mr. Stanley Tulchin, Secretary
Creditors' Committee
Stanley Tulchin Associates
350 Fifth Avenue
New York, New York 10001

Re: Dynamics Corporation of America
72 B 750

Dear Mr. Tulchin:

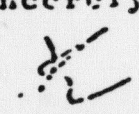
I am returning herewith our Bank's Proof of Claim with regard to our holding of Dynamics Corp. of America 7½% notes due 9/1/88 of which \$200,000 is held in our nominee name of Hoos and Co. while an additional \$100,000 is held in our nominee name of Jaquith & Co.

These notes are held in our capacity as Trustee or Custodian for various Pension funds. However, earlier this year we had held an additional \$200,000 which was transferred to a successor trustee, namely, Marine Midland Bank-Central, and are presently in their nominee of Carsec & Co. I am not a partner of Carsec & Co. but would appreciate your including this claim with ours, since the timing of your meeting Monday does not make it possible to get you their Proof of Claim.

Please include the following on your subsequent mailings: Mr. Ronald S. Hammel, Vice President, Marine Midland Bank-Central, 344 South Warren Street, Syracuse, New York 13201.

If you have any questions, please do not hesitate to call.

Sincerely,


Theodore J. Lipp
Pension Trust Officer

Sched. D

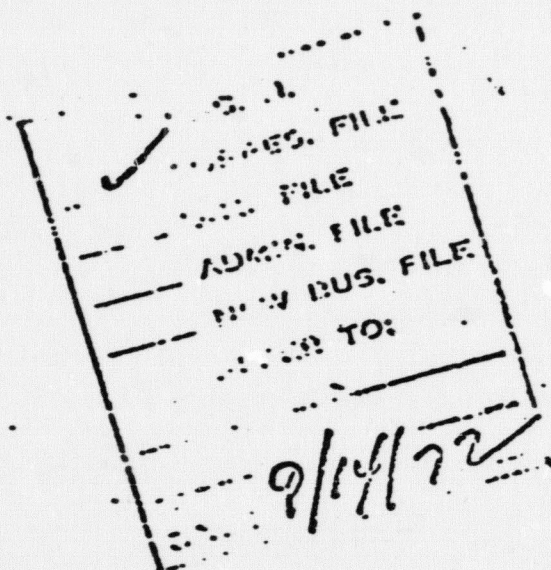
GENERAL UNSECURED CREDITORS

A 36

D

Claim # & Claimant	Amount of Claim	Proportion of \$15,000,000	# of Shares of Common Stock	
			Voting	Non-Voting
2865 Heiss, Gibbons & Co. 2501 N. Front Street Harrisburg, Penna.	325.90	92.88		
2866 Herr Mfg. Co., Inc. 17 Pearce Avenue Tonawanda, N.Y. 14150	8,100.00	2,302.50		
2867 High Production Machine Co. 265 Newington Avenue New Britain, Conn. 06051	615.12	175.21		
2868 Holland Motor Express, Inc. & Gerald Cooper 750 E. 49th Street Holland, Michigan	34.50	9.82		
2869 Hoos & Co. & Jaquith & Co. & Marine Midland Bank 140 Broadway New York, NY 10015	300,000.00	85,500.00		
2870 Hy-Grade Auto Supply Co.				Expunged by order dated June 18, 1974
2871 Hubbard Industries, Inc.				Expunged by order dated Sept. 12, 1974
2872 Hussey Metals Div. Copper Range Company & J.R. Matcuk 100 Washington Street Leetsdale, Penna.	887.76	253.01		
2873 Industrial Cutter Service, Incorporated 720 N.E. 40th Court Fort Lauderdale, Fla. 33307	2,141.60	610.36		
2874 Industrial Microwave Corp. 520 Martin Place Scotch Plains, NJ 07076	160.00	45.60		
2875 Alan Hrazan dba Industrial Specialties 1 Halloy Court Fairfield, Conn.	502.13	143.11		

89.13 P. 60



September 14, 1972

Mr. Stanley Tulchin, Secretary
Creditors' Committee
Stanley Tulchin Associates
350 Fifth Avenue
New York, New York 10001

Re: Dynamics Corporation of America
72 B 750

Dear Mr. Tulchin:

By letter dated September 8, 1972, Mr. Theodore J. Lipp, Pension Trust Officer of our New York Bank advised you that we hold \$200,000 of the 7 1/2% Notes due 9/1/88. They currently are registered in our Nominee which is Carsec & Co.

Please make certain that my name appears on all of your subsequent mailings as it is important that we be appraised of all future developments.

Sincerely yours,

Ronald S. L.
Vice President
& Trust Officer

RSE:sk

F

7. The Committee further designated OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C. and LEVIN & WEINTRAUB, ESQS. as its counsel and recommended that the Debtor-in-Possession retain the accounting firm of S. D. LEIDESDORF & COMPANY.

8. At the request and instruction of the Committee, applicant drafted and prepared on behalf of the Committee, a letter directed to the general unsecured creditors advising them of the filing of the petitions for arrangements and of the matters which had been taken up at said meeting of creditors on August 8, 1972. In addition, proofs of claim and powers of attorney were submitted to the creditors in accordance with the instruction of the Committee for the election of a Tentative Trustee and an Official Committee to be held at the First Meeting of Creditors. On August 18, 1972, letters and proofs of claim and powers of attorney forms were mailed to the creditors of the Debtor requesting that the proofs of claim and powers of attorney forms be executed and returned to applicant as Secretary-Agent of the Committee, copies of which are affixed and annexed hereto. Such proofs of claim received were examined and were turned over to counsel for the Committee for eventual filing with this Court. Proofs of claim received after that date were sent to the Bankruptcy Court for filing.

CREDITOR			TOTAL
NO.	CD	NAME	RECORDED
			.00
15087	S	BANKERS LIFE COMPANY	1,031,250.00
15088	S	CENTRAL LIFE ASSURANCE CO.	458,625.00
15030	S	CHASE MANHATTAN BANK	5,916,816.05
15089	S	CONNECTICUT GENERAL LIFE INS.	2,979,750.00
15090	S	CONNECTICUT MUTUAL LIFE INS.	1,031,250.00
15084	S	THE CONNECTICUT NATIONAL BANK	450,394.55
15091	S	FARM BUREAU LIFE INS. CO.	366,900.00
15092	S	FEDERAL KEMPER LIFE ASSURANCE	22,931.25
15093	S	FEDELITY LIFE ASSOCIATION	160,518.75
15083	S	THE FIRST PENN. BANK & TRUST	3,926,720.49
15094	S	GENERAL AMERICAN LIFE INS.	458,625.00
15095	S	GUARANTEE MUTUAL LIFE CO.	229,312.50
15096	S	MACCABEES MUTUAL LIFE INS.	487,125.00
15081	S	MARINE MIDLAND BANK	3,584,364.13
15106	S	MARINE MIDLAND GRACE & TRUST	515,625.00
15097	S	MASSACHUSETTS MUTUAL LIFE INS.	5,731,500.00
15086	S	THE NATIONAL BANK OF BLOOMINGTON	36,290.19
15098	S	NATIONAL LIFE INSURANCE CO.	1,546,875.00
15099	S	NATIONWIDE LIFE INSURANCE CO.	458,625.00
15100	S	NEW ENGLAND MUTUAL LIFE INS.	1,031,250.00
15082	S	NORTHEASTERN NATIONAL BANK	677,336.20
15101	S	NORTHWESTERN NATIONAL LIFE INS.	458,625.00
15102	S	PAN-AMERICAN LIFE INSURANCE CO.	716,437.50
15103	S	PEOPLES LIFE INSURANCE CO.	275,175.00
15104	S	STANDARD INSURANCE CO.	91,725.00
15105	S	STATE FARM LIFE INS. CO.	1,432,875.00
14996	S	STATE NATIONAL BANK	496,013.70
15085	S	UNITED BANK & TRUST CO.	265,409.94

TOTAL-\$34,838,345.25

*Bank and Insurance Co Loans**Schedule A-3*

DYNAMICS CORPORATION OF AMERICA

BY: *c. lozyniak*

A. Lozyniak, President



H A 40

DYNAMICS CORPORATION OF AMERICA

501 FIFTH AVENUE, NEW YORK, NEW YORK 10017

TELEPHONE 681-3800

D.I.P.

December 31, 1973

Marine Midland Bank
250 Park Avenue
New York, N. Y. 10017

Please refer to
File No. 2315
when replying

Attention: Mr. Fred W. Hildum

Gentlemen:

In connection with the examination of our accounts as at December 31, 1973, which is being made by S. D. Leidesdorf & Co., Certified Public Accountants, 100 East 42nd Street, New York, N.Y. 10017, we shall appreciate it if you will furnish them with the following information regarding our indebtedness to you:

1. Description of Note.
2. Date of Note.
3. Original face amount of Note.
4. Unpaid balance of principal as at December 31, 1973.
5. Requirements as to amortization of principal.
6. Annual rate of interest and basis of computation.
7. Amount of accrued interest due to you and/or date to which interest has been paid as at December 31, 1973.
8. Names of obligors on the Note.
9. Names of endorsers or guarantors on the above.
10. Special provisions affecting payments to be made on principal or interest.
11. Details of any changes made in the terms of the Note since August 1, 1972.
12. Description and amount of collateral, including details of security agreements, financing statements, mortgages, liens, etc., for Note.
13. Indicate whether the terms of the Note, as presently constituted, have been fully complied with.

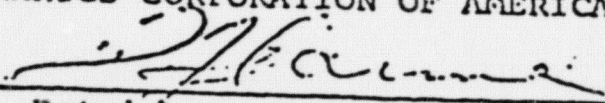
Please send your reply directly to our accountants,
in the enclosed stamped, addressed envelope.

We shall be grateful for your cooperation in this
matter.

Very truly yours,

DYNAMICS CORPORATION OF AMERICA

By


Patrick J. Dorme - Controller

PJD/jc

MARINE MIDLAND BANK
NEW YORK

A 42

250 PARK AVENUE • NEW YORK, N. Y. 10017

(212) 903-8300

March 12, 1974

D. D. Leidesdorf & Company
125 Park Avenue
New York, New York 10017

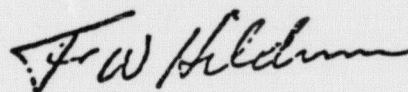
Re: File No. 2315
Dynamics Corp. of America

Gentlemen:

This letter is in reply to a letter received from Dynamics Corporation of America requesting the following information. A copy of their letter is enclosed.

1. 7½% Note due September 1, 1988, under Note Agreements dated 9/1/68.
2. Registered
2 X \$100,000 n/o Hoos & Co., nominee of Marine Midland Bank - NY dated 9/17/68
1 X 100,000 n/o Jaquith & Co., nominee of Marine Midland Bank - NY dated 3/1/71, originally 9/17/68 note in n/o Hoos & Co.
3. 100,000 Hoos & Co.
100,000 " "
100,000 Jaquith & Co.
4. 300,000 unpaid balance of principal 12/31/73.
5. Payable 15,000/yr. 9/1/73 thru 9/1/87.
6. 7½% on 360 day year payable 9/1 and 3/1 semi-annually.
7. Int. to 3/1/72 pd.
8. Dynamics Corp. of America
9. None
10. See Agreement
11. None
12. None
13. No

Very truly yours,



Fred W. Hildum
Trust Operations Officer

Encl.
cc: Messrs: T. J. Lipp
R. H. Thicke
R. S. Maxwell
Patrick J. Dorme - Dynamics Corp. of America

I

Transcript of Hearing, November 5, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter

of

DYNAMICS CORPORATION OF AMERICA,

Debtor

No. 72 B 750

United States Court House
Foley Square, New York, N. Y.

November 5, 1975
2:30 p.m.

Before:

HON. EDWARD J. RYAN

Referee
XXXXXX
Bankruptcy Judge

ADJOURNED HEARING ON MOTION TO ALLOW CLAIM OF
HOOS AND CO.

Appearances:

MESSRS. KRAUSE, HIRSCH & GROSS,
Attorneys for Debtor
BY: JOSEPH SAMMETT, ESQ.,
Of Counsel
41 E. 42nd Street
New York, N. Y.

GERALD L. METZ, C. S. R.
Official Court Reporter
Room 230, United States Court House
Foley Square, New York, N. Y. 10007
COOrdlandt 7-3137

APPEARANCES (continued):

MESSRS. SULLIVAN & CROMWELL,
Attorneys for Hoos and Co.
BY: DAVID RIGNEY, ESQ.,
Of Counsel
48 Wall Street
New York, N. Y.

MESSRS. OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C.
Co-attorneys for Creditors' Committee
BY: ALBERT TOGUT, ESQ.,
Of Counsel
230 Park Avenue
New York, N. Y.

ALSO PRESENT:

EDWARD MOONEY, ESQ.,
General Counsel for Debtor.

* * * * *

THE COURT: Dynamics Corporation of
America.

We have on the Marine Midland matter
this afternoon; is that so, gentlemen?

MR. RIGNEY: Yes. I understand that
Mr. Sammett would like to make a statement
about other matters previously scheduled
at this time and I will certainly defer.

MR. SAMMETT: With regard to the
matters that were on this afternoon,

1
2 claim number 5161, 4250 and 4292, I would
3 like an adjournment on that. As I discussed
4 with your secretary, the hearing on the
5 Hoos matter was on for the ten o'clock
6 calendar this morning. We advised her
7 well in advance to have the papers
8 forwarded on to you.

9 THE COURT: Now it comes before me
10 on the motion of Hoos and Co. for allowance
11 of the claim; is that right?

12 MR. RIGNEY: Yes, your Honor.

13 Your Honor, we have submitted two
14 memoranda of law and two affidavits
15 explaining the nature of our application
16 for allowance of this claim. If I might, I
17 would like to briefly summarize our
18 position.

19 THE COURT: If you would, I would
20 appreciate it.

21 MR. RIGNEY: And I would answer
22 any questions you might have and if I might,
23 within time allowed to me, say a word or two
24 in reply, if necessary.

25 Our application concerns \$200,000 of

1
2
3 notes of the debtor due 9/1/88. These
4 notes were purchased by Marine Midland as
5 part of \$500,000 of such notes in a
6 private placement in 1968. There were ten
7 purchasers in this placement. We were one
8 of the ten. We purchased, I guess, a 20th
9 of the notes then outstanding. These were
10 securities that had since that time in
11 1968 been registered on the debtor's books.

12 In 1972, shortly after the filing
13 of the petition in this matter, we received
14 a notification from the Creditors' Committee
15 reporting on the initial meeting and
16 initial developments and enclosing a proof
17 of claim form which was requested to be
18 returned to the Secretary of the Committee
19 for filing with the Court at the first
20 meeting scheduled before the referee on
21 September 11.

22 The documents at issue on our
23 application were the documents that we
24 returned in response to that request of
25 Mr. Tolchin. Mr. Lipp, one of our trust
officers, wrote a letter stating that

1
2 Marine Midland had held during 1972 the
3 \$500,000 in notes. He executed a proof of
4 claim form, in which \$300,000 of such notes
5 are referred to. In his accompanying letter
6 he also stated that there were an additional
7 \$200,000 of such notes held in the Carrier
8 Corporation Retirement Trust, and because
9 of the mistaken belief on his part, he
10 thought they had been re-registered in a
11 sister bank's nominee, that's Marine Midland-
12 Central's nominee, but he said, nonetheless,
13 because he was writing on a Friday before a
14 meeting scheduled for Monday, that he would
15 appreciate the Secretary including the claim
16 to the \$200,000 of notes with the claim to
17 the \$300,000 of notes described on the
18 formal proof of claim form.

19 Your Honor, the context of our
20 application is the following: the claim
21 that we transmitted to the Secretary of the
22 Committee in respect of \$300,000 of notes
23 has been allowed. It's never been in dispute.
24 It's not now in dispute insofar as I understand
25 the position of any other interested party.

The debtor, however, opposes our application for allowance of the \$200,000 of notes that were described in the letter but not in the official form with which it was transmitted.

Our position, stated in summary, is the following: it rests on two grounds. First, we view the claim that we submitted for transmittal to this Court in September of 1972 as a unified claim. I think the documents fairly and clearly indicate that. The letter itself describes the issue, the maturity, the interest rate. In fact, the proof of claim form itself really has to be read in the context of the letter that accompanies it, and I am frank to say that I don't know of a decided case that involves precisely this question in our first ground.

We say that our claim in fact has already been allowed, but it's as if there was an unintended-by-any-party clerical error that has led to it not being in fact allowed, according to its original tenor, and we would ask your Honor on the

1
2 first basis of our argument to allow the
3 claim in full as originally and properly
4 filed, viewed as a single document. Our
5 second position is --

6 THE COURT: That's the claim in the
7 covering letter to Mr. Tolchin, Secretary
8 of the Committee?

9 MR. RIGNEY: That's right.

10 THE COURT: Of course he's the agent
11 for the creditors, right? He's not the agent
12 for the debtor for these purposes. I assume
13 all of this is treated in your memorandum.

14 MR. RIGNEY: Yes.

15 Let me try to deal with that because
16 I think that comes close to being the crux
17 of the difference between us.

18 We have never asserted that Mr. Tolchin
19 was as such our agent, or that he was as
20 such the debtor's agent. Our position is
21 this: Mr. Tolchin indicated -- and I think
22 it was reasonable to rely on his indication--
23 that he was serving a function as an
24 intermediary between interested creditors
25 and the Court, and he specifically stated

1
2 that he would, without any charge to any
3 party, transmit the forms to the Court.

4 Now, we are not in any way raising
5 any issue concerning Mr. Tolchin on this
6 application, or as to who in fact he
7 represented. We are saying that he had
8 such a position that we constructively, in
9 good faith and with substantial efforts,
10 tried to file a claim with him, with the
11 understanding that in the normal course it
12 would go forward to the Court. We don't
13 claim that he was our agent as such. We
14 say that under equitable principles which
15 I think have been long recognized in the
16 Second Circuit, for a claim that was listed
17 within a month of this attempted filing
18 through Mr. Tolchin on the debtor's schedules
19 that's for a certain and liquidated amount,
20 that under all of the circumstances we
21 view that as effective as a fact of equity
22 to allow the claim in full to be recognized,
23 and I think our answer to the authority
24 question is that whatever the debate about
25 who he represented or what was done, part

1
2 of our claim did go to the Court. We are
3 not talking about something that was never
4 seen since it went into themail. In fact,
5 the better part of the claim was transmitted
6 exactly as we understood it would be, to the
7 Court. We now find, after the date of
8 confirmation, that the other part of the
9 claim did not enjoy a similar fate, so far
10 as we have been able to determine. But we
11 do submit as an equitable matter that there
12 is no reason to treat what in effect is two
13 parts of the same claim on a different
14 footing.

15 If I can say anything further to
16 amplify, in view of Mr. Tolchin's position,
17 I will certainly try to.

18 I would refer to one case that we
19 think is helpful in understanding how this
20 relationship can be put together. In the
21 High Point Seating Company case, an auditing
22 firm requested statements from creditors
23 of the debtor as to the nature of the
24 indebtedness of the debtor to them, and a
25 certain firm wrote to the auditor a day

1
2 after getting the letter saying, "I have
3 a claim of \$2,000 against the debtor," and
4 the auditor's report was then filed with the
5 referee. Through some inadvertence, the
6 debtor's own schedules, however, did not
7 include the amount of that claim, but this
8 was conceded by all, that it was a valid
9 and an accurate claim.

10 In the Second Circuit Opinion, which
11 was written by Judge Augustus Hand, and
12 the other panel members were Judges Clark
13 and Frank, the Court said that we have a
14 situation where the auditor properly
15 requested the statements of claim. The
16 statement was promptly submitted. The
17 report of the auditor was filed with the
18 Court, and the amount of the claim was
19 not disputed. I guess no two cases are
20 exactly the same, but we think that that
21 comes very close to ours.

22 THE COURT: These were the debtor's
23 auditors; correct? Were they the agents of
24 the debtor for the purpose of conducting
25 the audit?

1
2 was still in itself a valid proof of claim,
3 both in its form and in the circumstances
4 of its delivery. For example, in the
5 Gibraltar Amusement Company case and in
6 High Point Seating, both are cases where,
7 so far as form is concerned, letters
8 indicating the nature of the debt and
9 the basis of the debt were found
10 sufficient.

11 So I would submit that when it
12 comes right down to it, I don't think
13 our case turns on whether the letter as
14 such, either considered individually or
15 as part of the other form that it went
16 with, is insufficient. This circuit has been
17 especially clear, and I think it's a
18 history that goes back to 1910 or earlier,
19 that if an initial claim is made in a
20 timely fashion -- and certainly this was
21 within five weeks of the filing of the
22 petition, the letter we're talking about--
23 then that provides a sufficient basis to
24 permit the eventual allowance of the claim.
25 In fact, we don't really contend that we

1
2 are seeking an amendment of our claim.
3 We are saying that this was a timely
4 claim in proper form and through an
5 inadvertence it has not yet been recognized
6 and allowed.

7 THE COURT: But you hang your hat
8 on the letter to Mr. Tolchin; right?

9 MR. RIGNEY: We hang it on two aspects,
10 your Honor. We first say that we transmitted
11 to Mr. Tolchin, in reasonable reliance in
12 what we understood would later happen, a
13 proof of claim that was directed to all the
14 notes we held. That's \$500,000 worth.

15 THE COURT: But only the claim for
16 \$300,000 ended up in the Court's file.

17 MR. RIGNEY: That's right. We say,
18 first of all, that we just have to go back
19 and say that claim that's in your files in
20 fact was something different when it started
21 out, and it should now be recognized for
22 what it was intended to be at the start.

23 THE COURT: Let's suppose that a formal
24 claim, though, had been sent to Mr. Tolchin
25 for the other \$200,000. As I understand

1
2 Gibraltar and the related cases, there must
3 be a filing -- first, it should be filed
4 with the Court, but the Courts have held
5 that where there is a filing with the
6 trustee to represent a demand against the
7 estate, then even an informal claim can
8 be made a formal one.

9 MR. RIGNEY: Yes, your Honor.

10 THE COURT: But have any of the
11 cases touched the situation where really by
12 definition the secretary of the Creditors'
13 Committee is the agent of the Creditors'
14 Committee?

15 And they are certainly not the
16 alter ego of either the trustee or the
17 debtor, that is, the creditors' committee.

18 MR. RIGNEY: I have found no case
19 which speaks to that point. I would go
20 back and say the closest case on this
21 aspect of your question --

22 THE COURT: One of the auditor's
23 reports.

24 MR. RIGNEY: Is the auditor's case
25 because there we have a case of a certain
debt that was known to any interested party

1
2 Promptly after the filing of the petition
3 and at the same time, although the auditor
4 might technically be acting for the debtor,
5 he was not acting for any person concerned
6 to solicit claims for filing. He was making
7 a survey of what the debts were at a given
8 time.

9 I would like to add this as a final
10 point, I guess, in my initial statement.
11 There are cases in which, say, take the
12 Oscillation of Therapy Products case,
13 interested parties go to an attorney and
14 they ask him to prepare a claim against
15 the estate, in fact to file a petition. It
16 so happened that the attorney later became
17 the trustee and two years later discovered
18 in his own papers that he held these claims,
19 though he had never actually filed them with
20 the Court.

21 We would say the following: We think
22 our case in its basic aspects is a stronger
23 one than a case like Oscillation Therapy
24 because it was just a fortunate chance for
25 those claimants that the lawyer they consulted

1
2 in the first instance later became the
3 trustee. In our case, we received a letter
4 from Mr. Tolchin, who, as I understand it,
5 is a person very experienced in these
6 matters. It certainly seemed in good order
7 and a reasonable step to take to respond
8 promptly and to send the full claims to
9 him and in the total context of our case,
10 where the debt was known right at the start
11 of this proceeding, where, in our view, we
12 acted reasonably to submit the claims to
13 him, and in fact where the claim in its
14 larger part was dealt with just as we
15 understood it would be, I would say this,
16 our basic position is that it's well within
17 your equitable discretion to allow this
18 claim, and I submit that the equities due
19 predominate in favor of its allowance.

20 That's the gist of our position.

21 THE COURT: Do we know whether the
22 debtor did or did not do anything in reliance
23 upon the non-filing?

24 I don't know whether my question is
25 clear.

1
2 MR. RIGNEY: Unfortunately I could not
3 give a complete answer, but I would respond
4 in this general way. Since this was a private
5 placement of debt, it was registered on the
6 books at the time. It would be difficult to
7 imagine that the debtor reasonably could have
8 relied to any substantial extent on whether
9 the claim went in or not. I think at any time
10 the debtor would have to conclude that a
11 valid claim was filed and certainly should
12 be filed in respect of such a certain type
13 of debt when we are talking about banks and
14 insurance companies. I can't imagine that
15 the debtor changed its position in any
16 material way, or that any other person
17 concerned with this estate changed their
18 position in a material way.

19 That would basically conclude my
20 presentation, and if there are any further
21 questions, I would try to respond.

22 THE COURT: Mr. Sammett, if you will,
23 please.

24 MR. SAMMETT: I would like to summarize
25 the position before I go into the facts.

1
2 I think the facts need some further
3 light.

4 Number one, I don't believe that the
5 Court has jurisdiction over this matter
6 because of the fact that what this amounts
7 to is an amendment of a proof of claim
8 and it's being done post-confirmation.

9 Number two, the purported claim
10 is certainly untimely. It's substantively
11 not a proof of claim, and the proof of
12 claim was delivered to a party not
13 authorized by the Bankruptcy Act or the
14 Bankruptcy Rules to receive or forward a
15 proof of claim.

16 In addition, I believe that the
17 motion has been brought on by an improper
18 party.

19 Six months after the entry of the
20 order of confirmation, the motion was made
21 by Hoos and Company for an order allowing
22 the claim in respect to these 200,000-dollar
23 principal amount of negotiable promisory notes.
24 Until the end of 1971, Marine Midland
25 New York and Marine Midland-Central served

1
2 as co-trustees of the Carsec Trust which
3 held the \$200,000 principal amount of notes.
4 Marine Midland had acquired this back in
5 1968, the entire \$500,000, the \$200,000. In
6 January, 1972, prior to the petition, Marine
7 Midland New York ceased acting as co-trustee
8 of this Carrier trust. Thereupon Marine
9 Midland-Central became the sole trustee.
10 In the early months of 1972, the assets
11 were at the direction of Theodore Lipp,
12 the gentleman whose affidavit counsel relies
13 on, who was formerly the pension trust
14 officer. He physically delivered, prior to
15 the petition, the assets to Marine Midland.

16 On August 2nd, the debtor filed its
17 petition under Chapter XI. On August 8th
18 Mr. Lipp attended the meeting of creditors,
19 and subsequently Mr. Lipp received a
20 letter dated August 23, 1972, from Stanley
21 Tolchin. The letter, which is Exhibit B,
22 stated that a meeting of the largest
23 creditors had been held, the meeting of
24 which Mr. Lipp had been at, and the
25 Committee requests that Mr. Lipp execute

1
2 the enclosed proof of claim. It said also
3 that it would be voted for a tentative
4 trustee, and to make the undersigned
5 committee official.

6 The letter further requested proofs
7 of claim be returned to the office of the
8 Creditors' Committee promptly, so that they
9 would have it in time for the next meeting,
10 which was the First Meeting of Creditors.

11 By letter of September 8, 1972,
12 which is Exhibit C, Mr. Lipp replied to
13 Mr. Tolchin's letter, stating, "I am
14 returning our Bank's proof of claim with
15 regard to \$200,000 of Hoos and Co., and
16 an additional \$100,000 in our nominee
17 name of Jaquith and Co."

18 These \$300,000, which he mentions
19 here, where there is a formal proof of claim
20 which is attached to Mr. Rigney's reply
21 memorandum, has been paid, was allowed and
22 was paid, and there is no question about
23 that. But the letter continues on September 8th.
24 It says,

25 "These notes are held in our capacity

1
2 as Trustee or Custodian for various Pension
3 funds. However, earlier this year..." And
4 this is the man who made the transfer of
5 the assets -- "we held an additional \$200,000
6 which was transferred to a successor trustee,
7 namely, Marine Midland Bank-Central..." He
8 continues by saying, "I am not a partner of
9 Carsec and Co.," and the reason he says
10 he's not a partner of Carsec and Co. is
11 that Carsec and Co. is the nominee of
12 Marine Midland-Central, which Mr. Lipp is
13 not a member of.

14 No written proof of claim to the
15 notes in issue was attached therein. None
16 was subsequently sent to Mr. Tolchin.
17 None was filed with the Court, and I don't
18 believe Mr. Rigney is making that claim.

19 THE COURT: May I ask you this,
20 Mr. Samet: Do you know whether Mr. Lipp
21 communicated with either Marine Midland Bank-
22 Central or its nominee, Carsec and Co.?

23 MR. SAMET: I believe that he
24 communicated with them at a subsequent date.
25 I am not sure as to -- I can give you --

1
2 THE COURT: I didn't want to interrupt
3 your train of thought, by any means. I'm
4 trying to follow you very closely.

5 Do you contend that the real party in
6 interest is Marine Midland Bank-Central
7 and/or Carsec and Co. or some interest
8 than Hoos and Co.?

9 MR. SAMET: We do. It's very difficult
10 to follow the train of where the notes
11 went to.

12 THE COURT: I think it's very simple.
13 The applicant here relies upon the proof
14 of claim that was transmitted to Mr. Tolchin
15 with the letter of September 8th; right?

16 MR. SAMET: That's correct.

17 THE COURT: The banks says that they
18 put the Creditors' Committee on notice that
19 there was another \$200,000 claim being
20 asserted against the Estate.

21 MR. SAMET: Yes, sir.

22 THE COURT: I think that you are
23 underlining for me the fact that Mr. Tolchin
24 was not so informed. He was informed that
25 there is someone else who has a \$200,000

1
2 interest, namely, Marine Midland Bank Central
3 or Carsec and Co.

4 MR. SAMET: Right.

5 THE COURT: So he was not asserting
6 a claim against the estate as a demand. He
7 was merely informing Mr. Tolchin of a state
8 of facts.

9 MR. SAMET: Right.

10 THE COURT: This is your position,
11 as I understand.

12 MR. SAMET: Yes.

13 If at the First meeting this was
14 brought to the attention of the Court and
15 there was no formal proof of claim, certainly
16 that letter could not be voted on at the
17 first meeting.

18 The claimant itself has no record
19 of any formal proof of claim being filed,
20 and we believe that Mr. Tolchin absolutely
21 acted with proper reliance on this.

22 THE COURT: He was given an informative
23 letter, but he had no duties.

24 MR. SAMET: He was given an informative
25 letter, saying -- that put the other party

1
2 on notice that subsequent hearings. Mr. Tolchin
3 certainly couldn't vote this at a First Meeting.

4 Now, subsequently about six days
5 later, Marine Midland-Central, Mr. Hummel,
6 sent a letter stating that he understood
7 that Mr. Lipp had advised Mr. Tolchin --
8 this is Exhibit E -- that Marine Midland-
9 Central holds \$200,000 of these notes. He
10 further stated that these notes are
11 registered in Marine Midland-Central's
12 nominee, which is Carsec and Co., and that
13 he would appreciate being informed of any
14 subsequent hearings, and that's exactly
15 what Mr. Tolchin did. He gave him notice,
16 had them notified of all subsequent
17 hearings.

18 Mr. Tolchin was elected standby
19 trustee, but in a Chapter XI case the
20 standby trustee has no real functions. It's
21 only a nominal position.

22 Proofs of claim in most other
23 matters were sent by Mr. Tolchin to the
24 Court for filing. The copy of the original
25 \$300,000 proof of claim is filed. In fact,

1
2 in the proof of claim it indicates that
3 \$300,000 only is requested, and where it
4 says, "What is the consideration?" There is
5 a question mark. It doesn't even make any
6 mention whatsoever of what the consideration
7 was, but this is the \$300,000 which was paid.

8 THE COURT: That was allowed and paid.

9 MR. SAMET: Which was allowed and paid,
10 and certainly there is no other mention of
11 an additional \$200,000.

12 The schedules were filed by the
13 debtor and properly so.

14 THE COURT: May I ask you this.
15 Did anybody ask Mr. Tolchin whether he did
16 anything with this letter of September 8th?

17 MR. SAMET: I am not aware.

18 THE COURT: Do you know, sir?

19 MR. RIGNEY: I don't know the ultimate
20 fate of it. I am certain that so far as I
21 know, it did not make its way to the Court.

22 THE COURT: No. I mean, I stopped
23 after Carsec and Co., but if we go on, it
24 is rather affirmative language on the part
25 of Mr. Lipp: "I am not a partner of Carsec

1
2 and Co. but would appreciate your including
3 this claim with ours, since the timing of
4 our meeting Monday does not make it possible
5 to get you their proof of claim."

6 So clearly Mr. Lipp had in mind the
7 fact that it was necessary for a proof of claim
8 to be filed by Carsec. Do we know whether
9 Mr. Lipp did anything?

10 I know this may be a rather informal
11 way of handling this type of motion, but we
12 are the last case of the day. Do we know
13 whether Mr. Lipp did anything to communicate
14 with Marine Midland Bank-Central or Carsec
15 and Co.?

16 MR. RIGNEY: Your Honor, I understand
17 that Mr. Lipp's letter, a copy of what he
18 had submitted to Mr. Tolchin, was in fact
19 submitted to Marine Midland-Central.

20 THE COURT: Prior to confirmation?

21 MR. RIGNEY: I think within the week
22 of his sending it to --

23 THE COURT: And they sat on their
24 hands, then, to the extent that a corporation
25 has hands to sit or.

1
2 MR. RIGNEY: if I might add one
3 clarifying statement.

4 THE COURT: As you mentioned before --
5 I realize I'm interrupting you -- we are
6 talking of the equities here, what happened.
7 This is what I want to find out. I don't
8 know whether we are ready to submit this
9 question. Perhaps some of these avenues
10 should be explored.

11 MR. SAMET: There was some correspondence
12 between Mr. Lipp, which is confirmed by
13 Mr. Hummel's letter saying that he understood
14 that Mr. Lipp advised Tolchin that Marine
15 Midland holds \$200,000 and further stated
16 the notes are registered in Marine Midland-
17 Central's nominee and that he also requested
18 subsequent mailings from the Creditors'
19 Committee, and this is exactly what
20 Mr. Tolchin did.

21 After this all transpired, the notes
22 were subsequently transferred to Bankers'
23 Trust, and this was prior to confirmation.
24 Bankers' Trust likewise has not submitted
25 a proof of claim prior to confirmation or

1
2 after confirmation.

3 By letter of --

4 THE COURT: Off the record.

5 (Discussion off the record)

6 MR. SAMET: On December 31, 1973,
7 prior to confirmation, Pat Dorme, the
8 controller of the debtor, at the behest of
9 the accountants, Leidesdorf and Co.,
10 requested from Marine Midland, New York,
11 which had been noted in the schedules,
12 "information regarding our indebtedness
13 to you in connection with the examination
14 of our accounts." And certainly this is
15 just like, I believe, the High Point case.
16 By letter of March 12, 1974, which is
17 Exhibit I, Mr. Hildum at Marine Midland
18 reaffirms Mr. Lipp's letter of September 8th,
19 and he states that the debtor owes Marine
20 Midland-New York the \$300,000 for which the
21 proof of claim had been filed, and which
22 had been paid out. No mention whatsoever is
23 made of the \$200,000 of the carrier notes
24 which is the subject matter of the proceeding.
25

1
2 On November 27, 1974, the order was
3 signed by your Honor, the order of confirmation.
4 Included therein was a plan and this plan
5 certainly relied upon the amount of claims
6 that were filed by all the creditors. Certainly
7 a \$200,000 claim is an amount to be considered.

8 Based on Rule XI-33(b)(2), which was
9 enacted recently, the time for filing a
10 proof of claim and its amendment is the
11 time of confirmation, with certain exceptions
12 not applicable here.

13 In fact, no claim had been filed
14 at all until this motion was brought on on
15 June 16, 1975. The Advisory Committee note
16 clearly states that the proofs of claim and
17 their amendments must be filed by confirmation,
18 and that this clears up any problem that the
19 Act had created prior to the enactment of
20 the Chapter XI rules.

21 The reason we find that there is
22 no jurisdiction of the Court is based on
23 Section 369 of the Act, which indicates that
24 proofs of claim must be filed within the
25 limitations as to time and amount prescribed
by Section 355, and if they are not, then

1
2 this Court has no jurisdiction of this
3 matter at all.

4 The claimant brings up the question
5 of equity. The Congressional intent to have
6 proofs of claim and their amendments filed
7 prior to confirmation is clearly brought out
8 in Rules XI-63, XI-32 and 906(b). XI-63
9 indicates that part 9 of the Bankruptcy
10 Rules apply in Chapter XI cases, except
11 that the references to various rules in
12 906(b) shall include a reference to
13 Chapter XI Rule XI-33(b) (2).

14 Upon referring to 906(b), on
15 enlargement, the pertinent portion of the
16 rule indicates that whereby the rules and
17 Act is required to be done at or within
18 a specified time, the Court for cause
19 shown may at its discretion, upon application
20 made after expiration of the specified
21 time period, allow a certain Act. However,
22 it specifically omits filing a proof of
23 claim or a late amendment. It does not
24 allow an amendment post-confirmation, and
25 it specifically made clear by including

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2 XI-33(b)(2). The Advisory Committee note
3 to 906(b) indicates the same.

4 The cases the claimant relies on
5 do not support the claimant's position,
6 especially because almost all the cases
7 relied on Section 57(n) rather than Section 355,
8 and with regard to any of the cases relying
9 on 57(n), these are all now inconsistent
10 and inapplicable during the pendency of a
11 Chapter XI case, and my citation on that
12 is 9 Collier at 44.

13 In any event, with regard to the
14 cases that the claimant mentions, in all
15 of those cases there was an actual and
16 timely and intended timely delivery or
17 timely filing with a party authorized
18 by the Bankruptcy Act in case law to
19 receive and forward a proof of claim. In
20 none of the cases cited was an actual
21 proof of claim given to a Creditor's
22 Committee or its agent.

23 Bankruptcy Rule 509(c) is certainly
24 consistent with the cited cases, and since
25 it went into effect in 1973, it's a recent

1
2 statement of the law and indicates that
3 the rules which were promulgated by
4 Congress would not allow delivery of a
5 proof of claim to a Creditor's Committee.
6 It specifically says that a trustee or
7 a debtor-in-possession or a receiver, that
8 a claim would be allowed should it mistakenly
9 be delivered to them. In this case, we don't
10 have it. We don't have official proof of
11 claim. We don't have anything resembling it.
12 Mr. Lipp's letter was certainly very
13 scrambled and should not put anybody on
14 notice that this was a proof of claim. In
15 fact, he indicates very clearly that he had
16 no authority to file a proof of claim.

17 I would like to re-emphasize this
18 statement in his letter. It says,

19 "However, earlier this year we
20 held an additional \$200,000 which was
21 transferred to a successor trustee, namely,
22 Marine Midland Bank-Central, and are
23 presently in their nominee, Carsec And Co."
24 He continues by saying, "I am not a partner
25 of Carsec and Co...."

1
2 We believe that Mr. Tolchin acted
3 in the highest manner, and Mr. Tolchin
4 believed that Mr. Lipp was not authorized
5 and he had no reason to believe that he was
6 authorized. Certainly this letter cannot be
7 charged to the debtor, and we believe that
8 it's a misguided attempt to have a proof of
9 claim allowed and that this is really a
10 sham and a coverup for neglect and possibly
11 even an after-thought because of the
12 negligence of all the parties involved.

13 This struggling debtor, Dynamics
14 Corporation of America, has righted itself,
15 as your Honor knows, after a two-year
16 battle in Chapter XI and would now be
17 asked to make a new distribution on a
18 \$200,000 claim. Certainly, an additional
19 deposit would have to be put up, and that's
20 not fair to the debtor and certainly not
21 within the Bankruptcy Act provisions. It's
22 clear that in the negotiations between the
23 debtor and its creditors to arrive at a
24 feasible plan in the best interests of all
25 creditors, the debtor clearly relied on the

1
2 number and amount of the proofs of claim
3 filed by the creditors, and funding of the
4 plan required delicate negotiations, often
5 based on the amount of debt that would have
6 to be satisfied prior to the emergence
7 from Chapter XI. The larger the debt, the
8 more money would have to be borrowed at
9 substantial interest rates.

10 The actual loan in this case is
11 cross-collateralized by all fixed assets
12 and all receivables, and the interest rate
13 is a full 4.5 percent above prime.

14 Congress has stated, has made it
15 clear, based on Section 355 and Rule XI-33,
16 that a debtor's schedules are not to be
17 relied upon as to determine who gets a
18 distribution but, rather, the creditor who
19 files a timely proof of claim and amendment
20 may recover a pro rata distribution.

21 The Creditors' Committee is not the
22 fiduciary to the debtor and certainly,
23 based on Rule 509, which allows a mistaken
24 proof of claim to be filed with the Court
25 and allowed, the Creditors' Committee is not

1
2 one of the parties that is contemplated.

3 Your Honor, I believe I am finished.
4 I would like to yield to Mr. Togut to make
5 any additional comments.

6 Do you have any questions?

7 THE COURT: No, not at this time.

8 Wait a minute. What about this question
9 of jurisdiction post-confirmation? Has
10 anybody cited Oceana International? It's
11 a fairly recent case.

12 MR. SAMET: I read the case, your
13 Honor, and I don't believe that this adds
14 anything new to Section 369.

15 THE COURT: No. If anything, it puts
16 in focus, What am I doing here? I am not
17 just simply doing a Gibraltar Amusements
18 or a High Point Seating pre-confirmation.
19 It's really an application to amend the
20 Order of Confirmation.

21 MR. SAMET: Absolutely, your Honor.
22 Oceana and the Law Research cases, which
23 have come down and which have discussed
24 Section 369, clearly indicate that any
25 claim which is not filed within the

1
2 limitation as to time and amount cannot be
3 allowed.

4 THE COURT: All right.

5 . MR. TOGUT: Your Honor, I appear here
6 on behalf of the Creditors' Committee and
7 I would like to try to clarify some misstatements
8 which have been made regarding the Committee
9 and its secretary, Mr. Stanley Tolchin.

10 THE COURT: Off the record.

11 (Discussion off the record)

12 MR. TOGUT: Reference is made to the
13 September 8th, 1972, letter which accompanied
14 the \$300,000 proof of claim which had been
15 sent to Mr. Tolchin in response to a letter
16 sent by Mr. Tolchin to all of the larger
17 creditors of this debtor, and there is
18 some question about whether that letter is
19 sufficient to constitute a \$500,000 claim
20 instead of the \$300,000 claim which has been
21 allowed and for which proof has been
22 filed in the Bankruptcy proceedings. With
23 that September 8th letter, Mr. Tolchin
24 received the \$300,000 proof of claim
25 which he promptly filed with the Court, and

1
2 a statement was made regarding the
3 additional \$200,000 in notes, and the
4 statement said that, in effect, they are
5 not ours; they are with Carsec and Co., and
6 that Mr. Lipp was not a partner of Carsec
7 and Co., but that he wanted to bring
8 Mr. Tolchin's attention to the fact that
9 there was another \$200,000 indebtedness.

10 Then the first meeting was held on
11 September 11, 1972, and a few days after
12 that, September 24, 1972, Mr. Tolchin
13 receives another letter from Mr. Hummel,
14 who is with Carsec and Co., and that
15 letter reaffirms what had been told
16 to Mr. Tolchin in the first instance
17 by Mr. Lipp, namely, that the \$200,000
18 in notes were with Carsec and Co.

19 THE COURT: What letter is this that
20 you last referred to?

21 MR. TOGUT: This is a letter dated
22 September 14, 1972. It is Exhibit --

23 THE COURT: It is probably Exhibit E.
24 This is the letter to Stanley Tolchin?

25 MR. TOGUT: This is a letter to

1 Stanley Tolchin from Mr. Hummel.

2 This is Exhibit E to Krause, Hirsch
3 and Gross's affidavit, executed by Patrick Dorme.

4 . So that September 14th letter
5 confirmed to Mr. Tolchin what he had originally
6 been told in the September 8th letter, and
7 as a result it developed subsequently that
8 in fact -- and we are told this, that as
9 of April, 1975, it was discovered that the
10 full \$500,000 had been with Hoos and Co.
11 throughout. \$400,000 had been with Hoos and
12 Co. throughout, and that a mistake had
13 been made.

14 THE COURT: Wait a minute. What's
15 the source of that last statement?

16 MR. TOGUT: That was the basis for
17 the Hoos and Co. application that's now
18 pending before your Honor.

19 THE COURT: Do I have that before me
20 in the papers?

21 MR. TOGUT: The papers which initiated
22 this hearing, submitted by Sullivan and
23 Cromwell, stated --

24 THE COURT: Do they show at all times
25

1
2 Hoos and Co. actually had \$400,000 and not
3 \$300,000?

4 MR. TOGUT: Yes, all together \$500,000.

5 . MR. RIGNEY: Rather than \$200,000. That
6 was the nature of the mistake. The Lipp
7 letter erroneously referred to re-regis-
8 tration in Carsec and Co. when in fact they
9 were then registered in Hoos and Co., and
10 they have to this day remained at Hoos
11 and Co.

12 THE COURT: That's why in this letter
13 in the left-hand side we have, "No."

14 MR. RIGNEY: That is consistent with
15 what I have said. I don't know the origin
16 of that.

17 THE COURT: On Exhibit E you will
18 notice in the left-hand margin is the word
19 "no" next to "they are currently registered
20 in our nominee, which is Carsec and Co."

21 Are you telling me, though, that
22 Hoos and Co. --

23 MR. TOGUT: It's our understanding,
24 based on the papers that have been submitted,
25 that Hoos and Co. at all times had the

1
2 \$400,000 but had been giving incorrect
3 information to the Secretary of the Committee
4 and had filed a claim for a lesser amount?

5 . THE COURT: Hoos and Co. filed a claim
6 for \$300,000 when they should have filed a
7 claim for \$400,000?

8 MR. TOGUT: Yes.

9 THE COURT: Then where is the other
10 \$100,000?

11 MR. SAMET: Can I clear it up?

12 There was \$500,000. It was \$200,000
13 in Hoos which a proof of claim was put in
14 for \$400,000 and there was \$100,000 for
15 Jaquith and Co., which makes a total of
16 \$300,000.

17 THE COURT: Where is the other
18 \$200,000?

19 The other \$200,000 is still with
20 Hoos, but they didn't know it. They had
21 \$400,000 and they only had \$200,000?

22 MR. SAMET: That's right, and they
23 never put it in. The people who put in
24 the first \$300,000, \$200,000 in Hoos and
25 \$100,000 in Jaquith, were Marine Midland.
Marine Midland put in for the \$300,000.

1
2 THE COURT: Marine-Midland put one
3 in in the name of Hoos for \$200,000 and one
4 in the name of Jaquith, but Marine Midland
5 did this?

6 MR. SAMET: Yes.

7 THE COURT: And they forgot to put
8 in the other \$200,000?

9 MR. SAMET: They forgot to put in
10 the other \$200,000, yes.

11 THE COURT: Is this so, cutting
12 through all of the chaff; is this what we
13 are really talking about? We are talking of
14 equities.

15 MR. TOGUT: I would be the first to
16 admit that this is a complicated situation.

17 THE COURT: I think it's extraordinarily
18 simple, if we have now gotten to the nub of
19 the thing, and if we have, that's the end
20 of it.

21 ^{RIGNEY}
MR. ~~TOGUT~~: What happened was this:
22 during the period of '72, when this trust
23 was transferred from a joint trusteeship
24 of Marine-Midland-New York and Marine-Midland-
25 Central, solely to Marine-Midland-Central,

1
2 it was understood at that time that all
3 of the notes had been re-registered. Now,
4 for reasons that aren't completely clear
5 to me, it has been very difficult for anyone
6 holding these notes with Dynamics to easily
7 effect re-registration, and that's been
8 true from 1972 and it's the common difficulty
9 that Bankers Trust suffered in its attempt
10 at re-registration of the notes.

11 Now, when Mr. Lipp wrote his
12 September 8th letter -- and I would like,
13 just to be absolutely clear, to quote the
14 critical sentence in full. While he said,
15 "I am not a partner of Carsec and Co.,"
16 I think it's necessary to read that whole
17 sentence, because that's really what we
18 are talking about. He went on to say,
19 "but would appreciate your including this
20 claim..." and he is referring to the
21 \$200,000 notes in question -- "since the
22 timing of our meeting Monday does not
23 make it possible to get you their proof
24 of claim."

25 Now, Mr. Lipp in his affidavit, and

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2 certainly his veracity here hasn't been
3 questioned -- I think we are just down to
4 semantics. When Mr. Lipp made that statement,
5 he said, although he was mistaken as to the
6 current registration of the notes, "I intended
7 my letter of September 8th to include the
8 claim to the carrier notes among those
9 claims presented at the First Meeting of
10 the Creditors' Committee before the Referee
11 on September 11."

12 Now, there has been a repeated attack
13 on Mr. Lipp's authority. The notes in
14 question were then and are now registered
15 in Hoos and Co. Mr. Lipp was then and is
16 now a partner of Hoos and Co., and going
17 beyond that, he's talking about the claim
18 that he is submitting in conjunction with
19 the sister bank. I wouldn't feel uncomfortable
20 with the position that an officer of a
21 sister bank under appropriate circumstances
22 could submit a proof of claim on behalf of
23 the sister bank. But we hardly have to go
24 that far. We are talking about a claim where
25 the intent is clear, if the whole sentence

1
2 is quoted at one time and, second, where
3 the authority is clear since he was a
4 partner of Hoos and Co.

5 Now, there wouldn't be cases in the
6 bankruptcy --

7 THE COURT: On whose letterhead was
8 this letter of September 8th, Marine-Midland,
9 Hoos or whose?

10 MR. TOGUT: Marine-Midland, as I
11 would understand it.

12 MR. RIGNEY: As far as I know, Hoos
13 doesn't have its own letterhead. That would
14 be my comment directed specifically to what
15 happened at the time.

#3 16 This was a valid claim. It was by
17 the partner of the entity involved, and his
18 intent is quite clear. The legal effect of
19 it is for your Honor to decide.

20 THE COURT: I am sure that you
21 wouldn't be urging that if Dynamics had a
22 counterclaim that could have been assertable
23 and only assertable if a proof of claim
24 were filed here in a summary proceeding.
25 I don't believe that he really intended to

1
2 submit to the summary jurisdiction of this
3 Court, but that's another matter that we
4 don't have to debate at this time.

5 MR. RIGNEY: There are cases that had
6 found under quite similar circumstances that
7 the one goes with the other, but that
8 case concerning summary jurisdiction, I
9 think it's the Chemical Bank case.

10 THE COURT: That was my case in Ira
11 Haupt, yes, in which an oral statement in
12 Court at the First Meeting was --

13 MR. RIGNEY: Barnham's or someone
14 from Cravath.

15 THE COURT: Chemical Bank.

16 Someone got up at the First Meeting
17 and exercised all of the rights of a
18 creditor and said, "I intend to file a
19 proof of claim," and I found that that
20 was the assertion of a proof of claim
21 sufficient to permit the debtor to counter-
22 claim against Chemical Bank.

23 MR. RIGNEY: I would say, your Honor,
24 to be consistent, we have to say, and I
25 have no problem with saying it, that
what's good for the goose is good for the

1
2 gander.

3 THE COURT; Suppose you had filed a
4 proper claim here and through inadvertence
5 it hadn't been dealt with in the order of
6 confirmation. What would be the effect
7 of that?

8 Mr. Samet, have you considered this?
9 I think it would simply be a non-dischargeable
10 debt, and they would go after the corporation
11 because it is not discharged by the order
12 of confirmation.

13 MR. SAMET: I believe that would be
14 the case, but here it was a scheduled debt.
15 It was scheduled for the full amount. The
16 debtor did everything within its power
17 that was proper under the Bankruptcy Act
18 and Bankruptcy Rules. The proof of claim
19 specifically, although it's not very clear
20 under the Xeroxing, says that \$300,000 --
21 this is the undisputed proof of claim --
22 was claimed. \$200,000 of it -- this is in
23 Mr. Rigney's reply brief.

24 THE COURT: I have that. Signed by
25 Mr. Lipp.

1
2 MR. SAMET: That \$200,000 was of
3 Hoos indebtedness and \$100,000 was from
4 Jaquith, for a total of \$300,000. This was
5 allowed, filed and a distribution was made.
6 \$200,000 of Hoos, certainly the Bankruptcy
7 Court has no jurisdiction of, and the merits,
8 the equities involved certainly show that
9 all the mistakes, all the improprieties
10 occurred as a result of creditor negligence,
11 rather than anything the debtor has, and
12 certainly Mr. Tolchin didn't do anything
13 wrong, because it's very clear that Mr. Lipp
14 indicated he had no authority, he's not
15 a partner of Carsec and Company.

16 MR. TOGUT: The entire indebtedness
17 was at all times with Hoos and Co., although
18 they were mistaken about it, and the
19 representations made to Mr. Tolchin in
20 the letters of September 8th, 1972, and
21 September 14, 1972, confirmed the fact
22 that it was their belief that they only
23 had a claim for \$300,000. '

24 The question arises about the filing
25 of a proof of claim at all here. I mean, we are

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2 dealing with a sophisticated debtor, a
3 sophisticated creditor and certainly a
4 sophisticated Creditors' Committee, and
5 Mr. Tolchin is no stranger to bankruptcy
6 proceedings, either.

7 Prior to 1963, Section 355 provided
8 that creditors didn't have to file claims
9 at all, that the amount listed in the
10 debtor's schedules was --

11 THE COURT: I remember that interim
12 period, yes.

13 MR. TOGUT: -- that amount would be
14 allowed on confirmation. Here \$500,000
15 was listed in the debtor's schedules. So
16 as a result of those amendments, now a
17 proof of claim has to be filed in a
18 Chapter XI proceeding. Mr. Tolchin got
19 the \$300,000 claim and he filed it with
20 the Court. This letter of September 8th,
21 which it's being contended was a proof of
22 claim, I don't think could possibly have
23 been construed to have been a proof of
24 claim by Mr. Tolchin, and I think if we
25 look at Section 57 of the Act, 57(a) states

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2 that, among other things, a proof of claim
3 has to state that the claim is justly owing
4 from the bankrupt or, in this case, it would
5 be from the debtor to the creditor, and
6 this September 8th letter stated exactly
7 the opposite. It said that the amount is
8 not owed by the debtor to us. It's owed
9 by someone else, by this Carsec and Company.

10 So that portion of the letter would
11 make it defective as a proof of claim, and
12 thus Stanley Tolchin would have no obligation
13 to file that letter as a proof of claim.

14 Furthermore, Section 57(b) provides
15 that if a debt is based upon a note or an
16 instrument, that note or instrument must be
17 attached, and it wasn't done, and for that
18 reason Mr. Tolchin did not treat the
19 September 8th letter as a proof of claim,
20 nor do I think he should have.

21 That's it, your Honor.

22 MR. SAMET: I would just like to
23 make one more point, that with reference
24 to that High Point case, by letter of
25 December 31, 1973, a letter was sent out

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2 by the debtor and its accountants to Marine-
3 Midland-New York. Marine-Midland-New York
4 is the party involved, Marine-Midland-
5 New York and Hoos, and they specifically
6 ask, is there any indebtedness owed toward
7 you, and what is that indebtedness, and the
8 letter coming back on March of 1974, by
9 Marine- Midland-New York reaffirms
10 Mr.Lipp's letter of September 8th and
11 specifically says that \$200,000 of Hoos
12 notes are owed and \$100,000 of Jaquith
13 notes are owed.

14 THE COURT: Off the record.

15 (Discussion off the record)

16 MR. SAMET: It specifically says
17 that \$200,000 is owed to Hoos and Company
18 and \$100,000 to Jaquith.

19 THE COURT: That's item 3 in that
20 letter, yes.

21 MR. SAMET: And it makes no mention
22 whatsoever of an additional \$200,000,
23 which is what we are here for, and that's
24 exactly why the High Point case is not
25 in point. Any correspondence between the

1 debtor and the creditor has produced
2 only that the \$300,000 was due, and that's
3 exactly -- a distribution was made on the
4 \$300,000, the \$200,000 to Hoos and the \$100,000
5 to Carsec.
6

7 MR. RIGNEY: I would like to ask by
8 way of summary -- and I hope conclusions
9 so far as I am concerned -- is it Mr. Samet's
10 position, since he has repeatedly gone
11 back to this correspondence between the
12 debtor and Leidesdorf and Marine-Midland,
13 that the debtor was unaware of the facts
14 reflected by their own books at the time,
15 that obviously at a time six months or more
16 before confirmation it was apparent that
17 there was a misunderstanding as to the
18 registration of these notes. We specifically
19 stated --

20 THE COURT: What makes it apparent
21 to me that somebody in the debtor's employ
22 was confused or had actual knowledge that
23 there was \$500,000 due, not \$300,000?

24 MR. RIGNEY: Well, for this reason:
25 I think it's established by the two exhibits

1
2 here. We have a December 31 letter from
3 Dynamics Corporation signed by Mr. Dorme
4 addressed to Mr. Hildum and he asked for
5 a description of notes then held by
6 Marine-Midland, the debtor. The reply letter
7 encloses a BCC to Mr. Dorme. Now, if it's
8 the debtor's position that with knowledge
9 of the discrepancy like this for registered
10 securities six months in advance -- if we
11 are talking about sitting on hands, I
12 think this is the kind of circumstance
13 which, if attended in what I think would be
14 the normal course by a debtor seeking the
15 protection and benefit of a discharge
16 through a confirmation -- what I'm trying
17 to say is, we are not modeling ourselves
18 as perfect in each and every respect, but
19 if we are talking about a balancing of
20 equities, I think this is the kind of
21 situation that calls for an explanation,
22 and it's been conspicuously absent,
23 heretofore. I think it's a mistake to put
24 the emphasis, at least, that the debtor
25 does in this. This shows a situation where

1
2 the last-clear chance to avoid all that
3 we are now going through at this hearing
4 and the papers filed in connection with it
5 lay with other parties.

6 THE COURT: You have got to remember,
7 though, you have the laboring oar. There is
8 nothing here from which I can assume that
9 Mr. Dome, when he received the letter of
10 March 12, 1974, knew and consciously failed
11 to call anybody's attention to the fact
12 that Marine-Midland was owed \$500,000 but
13 was only claiming for \$300,000. That would
14 be sheer speculation on my part.

15 MR. RIGNEY: We don't have a record
16 on this, but at the level of arguing the
17 point, I think we have to assume that the
18 debtor knew what was registered on its
19 books. Only ten purchasers were involved
20 in the securities, and Hoos and Co. has
21 since 1968 been registered for \$400,000
22 of the securities. So a question arises,
23 let me say only that, and I think it's
24 the kind of illustration that this situation
25 we are talking about has not been an

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2 unbroken path of negligence or asserted
3 negligence on our part. It's been a situation
4 where many different SNAFU's occurred all
5 along the line. The question is, what is the
6 scope of your equitable jurisdiction?

7 It is clear -- and I do want to
8 stress this -- we can't understand what
9 Lipp was doing in 1972 without recognizing
10 two things. First, his statement is to me
11 crystal-clear. He said, "But I would
12 appreciate your including this claim with
13 ours." He, though mistaken, was in fact
14 a partner of Hoos and Co. These are
15 Hoos and Co. notes, and I think that has
16 to be recognized.

17 The final point is this: We are not
18 asking for any extension of time for the
19 filing of a claim. Our position is that
20 this claim, the basis of our application,
21 was timely filed, and we say it on two
22 grounds, again.

23 THE COURT: You mean the proof of
24 claim read in the light of the letter of
25 September 8th?

1
2 MR. RIGNEY: Yes.

3 I think that would be my final point.
4 There is comment about the supposed incomplete-
5 ness or there is a question mark concerning
6 the consideration. I submit, your Honor,
7 that you have to read these two documents--
8 when I say, "You have to" --

9 THE COURT: I know what you mean.

10 MR. RIGNEY: -- just as a matter of
11 understanding the two documents.

12 THE COURT: What two documents? You
13 mean the letter of September 8th and the
14 letter of March 12th?

15 MR. RIGNEY: And the claim form that
16 went with it.

17 THE COURT: All right.

18 MR. RIGNEY: He's saying in the letter,
19 "This is a claim. I am telling you that we
20 hold Dynamics 7.5 due 9/1/88." None of that
21 appears in the official form, and I submit
22 that when you look at these two together
23 within the equitable discretion that I
24 submit you have, without restriction by
25 any of these recent amendments concerning

1
2 Chapter XI, that there is a very substantial
3 basis for your exercising that discretion
4 to give the proper effect to what was done
5 in good faith, and I would say promptly
6 at the time. We wouldn't be here if this
7 were letter-perfect. But I submit that
8 when all the equities and relevant
9 considerations are taken into account,
10 that this is a substantial application
11 which I hope, when you review all the
12 equitable powers that you have, will be
13 given favorable consideration.

14 That's my concluding statement,
15 and I would certainly either answer
16 questions or undertake any further submission
17 that you might request.

18 THE COURT: Anything further,
19 Mr. Samet?

20 MR. SAMET: Your Honor, with regard
21 to the indebtedness, these were negotiable
22 promissory notes. At the time that a
23 letter was written asking, concerning the
24 debts, there is certainly the possibility
25 that those notes could have been negotiated

1
2 by Marine-Midland to other parties, so I
3 don't think there is anything unusual about
4 that, and certainly the debtor, which does
5 not have the burden, has all the equities
6 on its behalf that the claimant has not
7 met its burden, that the Court has no
8 jurisdiction and that Mr. Rigney there
9 is to speak about equities, but the
10 equities are with the debtor, and certainly
11 the Bankruptcy Act and the Bankruptcy Rules
12 are with the debtor.

13 THE COURT: Anything else?

14 MR. TOGUT: I just want to address
15 one last point made by Mr. Rigney. I think
16 that if Stanley Tolchin possibly could
17 have construed that September 8th letter
18 to be a claim, it would have been filed
19 with the Court, and Section 57 of the Act,
20 which deals with proof and allowance of
21 claims, specifies that a claim must meet
22 certain standards. One of them is that it's
23 signed by the creditor, and here Mr. Lipp
24 was the creditor because Hoos and Co.,
25 although it didn't know it, was throughout

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2 a creditor regarding these \$200,000 in notes.
3 But it also says in Section 57 that the
4 claim must state that the amount is owing
5 from the bankrupt to the creditor, or from
6 the debtor to the creditor, and the contrary
7 statement was made. It was stated in that
8 September 8th letter that the amount is
9 owed by DCA to somebody else whom Mr. Lipp
10 had no connection with, nor whom Mr. Lipp
11 had any authority to represent.

12 THE COURT: In fact, as I understand
13 it, though, Mr. Lipp, representing Hoos
14 and Co., actually did have full authority
15 with respect to the unclaimed \$200,000;
16 correct?

17 MR. TOGUT: That's correct, your
18 Honor. But the statement --

19 THE COURT: But he didn't know it.

20 MR. TOGUT: The statement he made was
21 misleading. He said the money is owed to
22 somebody else.

23 THE COURT: What about High Point
24 Seating Co.? Have you Sheperdized that case?
25 Mr. Rigney tells us that in that case, the

1
2 claimant was permitted to file a proof of
3 claim six months following confirmation.

4 MR. TOGUT: I think there are two
5 distinctions. In the High Point Seating
6 case --

7 THE COURT: There was an informal
8 claim filed with the debtor.

9 MR. TOGUT: Not only that, but it
10 met all the requirements of Section 57 in
11 that it stated that the amount is owed to
12 us, not to someone else. It specified the
13 indebtedness. It was supported by detailed
14 numbers. In High Point, another distinction
15 is that the debtor had omitted the creditor
16 from its schedules.

17 THE COURT: But only through negligence.
18 There was no bad faith, according to the
19 briefs.

20 MR. TOGUT: Here the debtor listed
21 the full \$500,000. So on those two bases,
22 I think that it's a distinguishable case
23 and the other cases cited deal with Section 57(n)
24 and 57(n) has no applicability in a Chapter XI
25 proceeding.

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THE COURT: Anything else, gentlemen?

MR. SAMET: No, your Honor.

THE COURT: The application must be, and it is, denied on two bases. Number one, as a matter of law, in my opinion, even if a proper proof of claim which met all of the requirements had been sent to Stanley Tolchin, requesting that it be forwarded, I believe that this, on a simple agency theory, would not be sufficient to allow at this time the filing of that proof of claim. The secretary to the Creditors' Committee is by definition the secretary, the agent of creditors, not the agent of the Court, not the agent of the debtor.

Number two, I find that even though the letter of September 8th does refer to (even though erroneously), the other \$200,000, the language does not set forth the necessary demand against the estate that's required to be found in an informal proof of claim. It is merely a mild misstatement by Mr. Lipp: "I am not a partner of Carsec and Co. but would

1
2 appreciate (emphasis mine) your including
3 this claim of ours..." merely for information
4 purposes, as I read the September 8th
5 letter. It is not the type of demand
6 against the estate that can be considered
7 to be an informal proof of claim.

8 Now, I have given due weight, I
9 think, to all of the factors which have
10 been argued here. The mere fact that the
11 debtor scheduled these debts does not render
12 any greater force to the proposed informal
13 proof of claim here. The debtor is under
14 no obligation, in fact it would be improper
15 for the debtor, to arrange in the order
16 of confirmation for the payment to scheduled
17 creditors of sums due to them, absent the
18 filing of a proof of claim timely.

19 Accordingly, I will ask you,
20 gentlemen, Mr. Samet, to settle proposed
21 findings of fact and conclusions of law
22 on the record as we now have it.

23 Again, not by way of apology, I
24 feel I have given this all of the consider-
25 ation it requires. I am familiar with the

1
2 cases, and if I had taken this inside
3 decision reserved, you would see a decision
4 in about six, nine months, if you are lucky.
5 So we have the framework now to start
6 it upstairs, and I wish you a good afternoon.

7 (Hearing closed)
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Findings of Fact, Conclusions of Law and Order,
February 11, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x	
In the Matter	:
of	:
DYNAMICS CORPORATION OF AMERICA, INC.	:
Debtor.	:
----- x	

In Proceedings for
an Arrangement
No. 72 B 750

FINDINGS OF FACT,
CONCLUSIONS OF
LAW AND ORDER

The claimant Hoos & Co. having moved for an order allowing its claim in respect to \$200,000 principal amount of the notes of debtor, and said motion having come on to be heard before me on November 5, 1975,

NOW, upon the notice of motion dated June 16, 1975, and the annexed affidavits, with exhibits, by Theodore Lipp and Ronald Hummel, sworn to June 11, 1975 and June 5, 1975, respectively, and upon the September 24, 1975 reply affidavit, with exhibits, of Patrick Dorme, Treasurer of Dynamics Corporation of America ("D.C.A."), and after hearing Sullivan & Cromwell by David Rigney, attorneys for the claimant in support of said motion, and Krause, Hirsch & Gross by Joseph Samet, attorneys for the debtor, in opposition thereto; and due deliberation having been had thereon, and upon the decision from the bench of the undersigned dated November 5, 1975,

I hereby enter the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. On June 16, 1975, Hoos & Co. made a motion for an order allowing the claim in respect to \$200,000 principal amount of the negotiable notes of debtor, due 9/1/88, registered in the name of Hoos & Co. and held by the Carrier Corporation Retirement Trust ("Carrier Trust").

2. In September 1968, Marine Midland Bank-New York (hereinafter Marine Midland-New York), purchased, as trustee or custodian for and on behalf of certain pension funds, \$500,000 principal amount of the notes of debtor due 9/1/88. Until the end of 1971 Marine Midland-New York and Marine Midland Bank-Central (Marine Midland-Central) served as co-trustees of the Carrier Trust, which trust beneficially owned \$200,000 principal amount of said notes of debtor. The \$200,000 principal amount of the notes held by the Carrier Trust were registered in the name of Hoos & Co. The additional \$300,000 of notes of the debtor were held in other custodian accounts at Marine Midland-New York.

3. In January 1972, Marine Midland-New York ceased acting as co-trustee of the Carrier Trust and Marine Midland-Central thereupon became the sole trustee thereof. In the early months of 1972, the assets of the Carrier Trust were, at the direction of Theodore Lipp, then Pension Trust Officer of Marine Midland-New York, physically transferred to Marine Midland-Central. For the most part, the securities in the trust were re-registered in the name of Marine Midland-Central's nominee, Carsec & Co.

4. On August 2, 1972, the debtor filed its petition under Chapter XI. On August 8, 1972, Theodore Lipp (an employee of Marine Midland-New York and a partner of Hoos & Co.) attended a meeting of creditors of the debtor. On September 7 or September 8, 1972, Lipp received a letter dated August 23, 1972 from Stanley Tulchin, Secretary of the Creditors' Committee of the debtor. The letter, Exhibit A to the Lipp affidavit, stated that a meeting "of the larger Creditors" had been held on August 8, 1972, and that "to safeguard Creditors' rights and facilitate negotiations with the Debtor", a committee representing various creditor groups had been elected by those present. The letter further stated:

"The Committee requests your executing the enclosed Proof of Claim in order that your claim may be filed with the Referee. It will be voted for a tentative trustee and to make the undersigned Committee official. It will not be voted in connection with any plan of arrangement. There will be no charge for filing of claim by the Committee or any of its counsel or representatives."

5. The August 23 letter from Stanley Tulchin requested that the proofs of claim be returned to the office of the Committee's secretary "promptly so that we will have it in time for the next meeting scheduled for September 11, before the Referee in Bankruptcy."

6. By letter of September 8, 1972, Exhibit B to the Lipp affidavit, Mr. Lipp replied to Mr. Tulchin's letter of August 23, 1972, advising him that:

"I am returning herewith our Bank's Proof of Claim with regard to our holding Dynamics Corp. of America 7 1/2% notes due 9/1/88 of which \$200,000 is held in our nominee name of Hoos & Co. while an additional \$100,000 is held in our nominee name of Jaquith & Co."

7. The proof of claim for these \$300,000 of notes is not in issue in this case and in fact that claim was paid.

8. The September 8 letter of Mr. Lipp further stated:

"These notes are held in our capacity as Trustee or Custodian for various Pension funds. However, earlier this year we held an additional \$200,000 which was transferred to a successor trustee, namely, Marine Midland Bank-Central, and are presently in their nominee of Carsec & Co. I am not a partner of Carsec & Co. but would appreciate your including this claim with ours, since the timing of your meeting Monday does not make it possible to get you their Proof of Claim."

9. The official proof of claim forms received by Mr. Tulchin in response to his letter to creditors were sent to the Bankruptcy Court for filing. Included therein was a proof of claim for \$300,000 of the notes of debtor, which claim Lipp had sent to Tulchin with his letter of September 8, 1972.

10. No official proof of claim form separately describing the \$200,000 of notes beneficially owned by Carrier Trust was ever given to Tulchin or filed by the claimant. As the basis of its claim herein, Hoos & Co. specifically relies on the September 8, 1972 letter of Theodore Lipp, and the accompanying proof of claim with respect to \$300,000 of the notes of debtor.

11. The letter of September 8, 1972, further requested that Tulchin include Ronald Hummel, Vice President of Marine Midland-Central, on the mailing list of the Creditors' Committee.

12. Mr. Hummel sent a letter on September 14, 1972 to Mr. Tulchin, Exhibit A to the Hummel affidavit, which

stated that Mr. Lipp had advised Tulchin that Marine Midland-Central held \$200,000 of the 7-1/2% notes due 9/1/88. Hummel's letter further stated that the notes were registered in the name of Carsec & Co. and requested subsequent mailings from the Creditors' Committee. Commencing in October 1972, Mr. Hummel regularly received communications from the Creditors' Committee.

13. At the first meeting of creditors on September 11, 1972, Mr. Tulchin was elected standby trustee and the unofficial creditors' committee was formally elected.

14. Schedules of creditors were filed by the debtor on October 5, 1972. On Schedule A-3 thereof, Marine Midland Grace Trust Company, the predecessor of Marine Midland-New York, was scheduled as a creditor for \$500,000, plus interest, for an aggregate total of \$515,625. (Schedule A-3, Exhibit G to the affidavit of Patrick Dorme.) Such \$500,000 principal amount of debt consisted of the \$200,000 of the notes of debtor registered in the name of Hoos & Co. and held by the Carrier Trust, and the additional \$300,000 of the notes of debtor, registered in Marine Midland-New York's nominees Hoos & Co. and Jaquith and Co. and held in other trust and custodian accounts with Marine Midland-New York.

15. As of September 30, 1973, Bankers Trust replaced Marine Midland-Central as trustee of the Carrier Trust and the assets of the trust (including the notes of the debtor beneficially owned by Carrier Trust and registered in the name of Hoos & Co.) were transferred to Bankers Trust. Bankers Trust unsuccessfully attempted to have

registration of the notes transferred to its nominee. Bankers Trust has not filed a proof of claim for the notes in question, but requested that Hoos & Co. file an application for allowance of the claim with respect to \$200,000 principal amount of the notes of debtor beneficially owned by the Carrier Trust. The present motion of Hoos & Co. for allowance of this claim has been made in accordance with this request of Bankers Trust.

16. By letter of December 31, 1973, Exhibit H to the Dorme affidavit, Patrick Dorme, Controller of the debtor, requested that Marine Midland-New York furnish to the debtor's Court appointed auditors, S.D. Leidesdorf & Co., "information regarding our indebtedness to you . . . in connection with the examination of our accounts." By letter of March 12, 1974, Exhibit I to the Dorme affidavit, Mr. Fred W. Hildum, Trust Operations Officer of Marine Midland-New York, replied to the December 31, 1973 letter from Mr. Dorme, identifying \$300,000 principal amount of notes of debtor held by nominees of Marine Midland -New York. The March 12, 1974 letter from Mr. Hildum did not refer to the additional \$200,000 principal amount of notes registered in Hoos & Co., which notes are the subject of claimant's present motion.

17. At the time Mr. Hildum's letter was transmitted to the accountants for the debtor, the schedules of the debtor indicated that \$500,000 principal amount of the 9/1/88 notes of the debtor were registered in the name of Marine Midland-New York or its nominees, rather than \$300,000 principal amount as indicated in Mr. Hildum's letter of

March 12, 1974. Neither S.D. Leidesdorf nor the debtor advised Marine Midland-New York of this discrepancy.

18. At the hearing on claimant's motion, the Court stated on the record that the "mere fact that the debtor scheduled" the debts evidenced by the notes in question on this motion "does not render any greater force to the proposed informal proof of claim here. The debtor is under no obligation, in fact it would be improper for the debtor, to arrange in the order of confirmation for the payment to scheduled creditors of sums due to them, absent the filing of a proof of claim timely." (Tr.-61)

19. On November 27, 1974 an order of confirmation was entered by this Court. At the time of confirmation, the \$500,000 in notes of the debtor due 9/1/88, and registered in nominees of Marine Midland-New York, appeared on the debtor's original schedules. Thereafter, pursuant to debtor's confirmation schedules a distribution was made with respect to the \$300,000 of said notes referred to in the proof of claim form accompanying Theodore Lipp's letter of September 8, 1972. No distribution has been made with respect to the additional \$200,000 of said notes which Mr. Lipp's September 8, 1972 letter referred to as held by Carsec Co., and which notes are the subject of the present motion.

20. On June 16, 1975, Hoos & Co. made its motion for allowance of the claim with respect to \$200,000 principal amount of the notes of debtor registered in the name of Hoos & Co. and beneficially owned by the Carrier Trust. Hoos & Co. has not asserted and does not assert that the motion dated June 16, 1975 is to be construed as a claim or amendment of claim, nor does it assert that a claim or amendment

of claim was filed by it after the confirmation of the plan of arrangement herein. Rather, as the basis of its claim herein, Hoos & Co. relies on the September 8, 1972 letter of Theodore Lipp, and the accompanying proof of claim for \$300,000, which latter claim has been paid in this proceeding.

19. Pursuant to requests of the debtor for adjournments of the hearing date, and stipulations of the parties, the motion of Hoos & Co., originally noticed for July 1, 1975, was heard by this Court on November 5, 1975. After the conclusion of oral argument, an opinion was issued orally by the Court denying the application of Hoos & Co. for allowance of its claim herein.

CONCLUSIONS OF LAW

1. Although the September 8, 1972 letter from Mr. Lipp to Mr. Tulchin refers to the \$200,000 principal amount of the notes of debtor at issue on this motion, the letter does not set forth an explicit demand against the estate which this Court holds is required in an informal proof of claim. Thus, this Court holds that the September 8 letter of Mr. Lipp was not an effective proof of claim because the letter failed to comply with the requirements of Bankruptcy Rule 301, made applicable to Chapter 11 proceedings by Bankruptcy Rule 11-33(a).

2. Even if a proper proof of claim meeting all requirements of the applicable rules had been sent to the Secretary of the Creditors' Committee, with a request that it be forwarded to the Court, the Secretary of the Creditors Committee is the agent of the creditors, not the agent of

the Court, nor the agent of the debtor, and thus, this Court holds that the delivery of Mr. Lipp's letter of September 8, 1972 to the Secretary of the Creditors Committee was not a valid filing under Rule 509(c).

STIPULATION

The parties hereby consent to the entry of the within stipulated findings of fact, agree to the form of the within conclusions of law, and further agree that an order may be entered thereon without further notice.

SULLIVAN & CROMWELL

By s/David B. Rigney
Counsel for Hoos & Co.
48 Wall Street
New York, New York 10005
(212) 952-8100

KRAUSE, HIRSCH & GROSS

By s/Lewis Kruger
Counsel or Dynamics Corporation of America
41 E 42nd Street
New York, New York 10017
(212) 986-1122

Dated: February 8, 1977.

ORDER

The motion of Hoos & Co. for allowance of the claim with respect to \$200,000 principal amount of the notes of debtor due 9/1/88, registered in the name of Hoos & Co. and beneficially owned by the Carrier Trust, be and the same hereby is denied.

s/Edward J. Ryan
Bankruptcy Judge

Dated: February 11, 1977

Notice of Appeal to District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter :
of :
DYNAMICS CORPORATION OF AMERICA, :
Debtor. :
----- :
HOOS & CO., Claimant : Bankruptcy No.
vs. : 72 B 750
DYNAMICS CORPORATION OF AMERICA, :
Debtor. :
----- -x

NOTICE OF APPEAL
TO DISTRICT COURT

Hoos & Co., a claimant herein, hereby appeals to the United States District Court for the Southern District of New York from the order of the Referee, Edward J. Ryan, J., dated February 11, 1977 and filed February 14, 1977, which denied the application of Hoos & Co. for allowance of its claim with respect to \$200,000 principal amount of the registered notes of debtor, due 9/1/88.

The parties to the order appealed from and the names and addresses of their respective attorneys are as follows:

Hoos & Co.
Sullivan & Cromwell
48 Wall Street
New York, N.Y. 10005
(212) 952-8100

Dynamics Corporation of America
Krause, Hirsch & Gross
41 E 42nd Street
New York, N.Y. 10017
(212) 986-1122

Dated: New York, New York
February 17, 1977

SULLIVAN & CROMWELL

By

David B. Rigney

David B. Rigney
Attorneys for Appellant
48 Wall Street
New York, New York 10005
(212) 952-8100

Statement of Issues and Designation of
Record on Appeal to District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter :
of :
DYNAMICS CORPORATION OF AMERICA, :
Debtor. :
----- : Bankruptcy No.
HOOS & CO., : 72 B 750
Claimant-Appellant, :
vs. :
DYNAMICS CORPORATION OF AMERICA, :
Debtor-Appellee. :
----- x

STATEMENT OF ISSUES AND DESIGNATION
OF RECORD ON APPEAL TO DISTRICT COURT

In accordance with Bankruptcy Rule 806, claimant-appellant Hoos & Co. designates the following issues on its appeal from the order of the Referee (Edward J. Ryan, J.), dated February 11, 1977, which denied the application of Hoos & Co. for allowance of its claim with respect to \$200,000 principal amount of the notes of debtor due 9/1/88.

ISSUES

1. When, in response to the written request of the Secretary of the Creditors' Committee, the claimant submits to the Secretary, within five weeks of the filing of the debtor's petition, a letter with accompanying proof of claim form that together describe claims with respect to

\$500,000 of the debtor's registered notes, was it error for the Bankruptcy Court to allow only the claim for \$300,000 set forth in claimant's letter and accompanying form, but to deny the claim for \$200,000 set forth in claimant's letter?

2. Is the September 8, 1972 letter of Theodore J. Lipp a sufficient demand against the debtor's estate to constitute a valid claim under Bankruptcy Rule 301?

3. Is the filing of the September 8, 1972 letter of Theodore J. Lipp with the Secretary of the Creditors' Committee, who requested the filing of claims with the Committee "in order that [the creditor's] claim may be filed with the Referee", a delivery to a person authorized to receive and forward such claims, so as to constitute a valid filing under Bankruptcy Rule 509(c)?

DESIGNATION OF THE RECORD ON APPEAL

Claimant-appellant Hoos & Co. designates the following for inclusion in the record on appeal:

1. September 8, 1972 letter from Theodore J. Lipp to Stanley Tulchin, Secretary of the Creditor's Committee, and Proof of Claim Form, executed by Theodore J. Lipp on September 8, 1972. (Exhibit A to the claimant's October 30, 1975 memorandum) —

2. Notice of Motion of Hoos & Co., dated June 16, 1975, with annexed affidavits of Theodore J. Lipp, sworn to June 11, 1975 and Ronald S. Hummel, sworn to June 5, 1975, and attached exhibits.

3. Affidavit of Patrick Dorme, sworn to September 24, 1975, with annexed exhibits.

4. Affidavit of Stanley Tulchin, sworn to December 9, 1974.

5. Transcript of Proceedings, November 5, 1975.

6. Findings of Fact, Conclusions of Law and Order, dated February 11, 1977 (filed February 14, 1977).

SULLIVAN & CROMWELL

By David B. Rigney

David B. Rigney

Counsel for Claimant-Appellant
Hoos & Co.

48 Wall Street
New York, New York 10005

(212) 952-8100

TO: KRAUSE, HIRSCH & GROSS
41 E. 42nd Street
New York, New York 10017

(212) 986-1122

Counsel for Debtor.

Counter-Statement of Issues and Designation
of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x	
In the Matter	:
	:
of	:
DYNAMICS CORPORATION OF AMERICA,	:
	:
Debtor.	:
	: Bankruptcy No.
-----	:
	: <u>72 B 750</u>
HOOS & CO.,	:
	:
Claimant-Appellant,	:
	:
vs.	:
	:
DYNAMICS CORPORATION OF AMERICA,	:
	:
Debtor-Appellee.	:
-----x	

COUNTER-STATEMENT OF ISSUES AND DESIGNATION
OF RECORD ON APPEAL TO DISTRICT COURT

In accordance with Bankruptcy Rule 806, appellee Dynamics Corporation of America ("DCA") designates the following issues on the Hoos & Co. ("Hoos") appeal from the order of the Bankruptcy Judge (Edward J. Ryan, J.), dated February 11, 1977, which denied the application of Hoos for allowance of its claim with respect to \$200,000 principal amount of the notes of debtor due 9/1/88.

ISSUES

1. Based on the stipulated Findings of Fact, whereby Mr. Lipp stated that he was not a partner of Carsec & Co., the course of conduct between the parties and the concession by the appellant that there was no Proof of Claim form filed for the notes in question, was there a demand in writing against the estate setting forth a creditor's claim executed by the creditor

or his authorized agent, and substantially conforming to the designated official form?

2. Is the mere filing of the September 8, 1972 Lipp letter with the Secretary of the Creditors' Committee, without a proof of claim for the notes in question, a delivery to a person authorized to receive a claim so as to constitute a valid filing?

DESIGNATION OF THE RECORD ON APPEAL

DCA designates the following for inclusion in the record on appeal:

1. September 8, 1972 letter from Theodore J. Lipp to Stanley Tulchin, Secretary of the Creditors's Committee, and Proof of Claim Form, executed by Theodore J. Lipp on September 8, 1972. (Exhibit A to the claimant's October 30, 1975 memorandum)
2. Notice of Motion of Hoos & Co., dated June 16, 1975, with annexed affidavits of Theodore J. Lipp, sworn to June 11, 1975 and Ronald S. Hummel, sworn to June 5, 1975, and attached exhibits.
3. Affidavit of Patrick Dorme, sworn to September 24, 1975, with annexed exhibits.
4. Affidavit of Stanley Tulchin, sworn to December 9, 1974.
5. Transcript of Proceedings, November 5, 1975.
6. Findings of Fact, Conclusions of Law and Order, dated February 11, 1977 (filed February 14, 1977).

KRAUSE, HIRSCH & GROSS

By: *Lewis Kruger*

Attorneys for Dynamics Corporation of
America
41 East 42nd Street
New York, New York 10017
(212) 986 1122

TO: SULLIVAN & CROMWELL
Counsel for Claimant-Appellant
48 Wall Street
New York, New York 10005
(212) 952-8100

Opinion of the District Court, May 17, 1977

1 UNITED STATES DISTRICT COURT
2 SOUTERHN DISTRICT OF NEW YORK

ENTERED

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4 In the Matter of :

5 : 72 B 750

6 DYNAMICS CORPORATION OF AMERICA :

7 - - - - -x

8 Before:

9 CHARLES E. STEWART, JR.,

10 District Court

11 May 17, 1977
12 12:15 p.m.

13 New York, New York

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16 OPINION

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THE COURT: I have a view on this matter and I would like to state it to you.

In a Chapter XI proceeding, under Rules 301 and 11-33 of the Bankruptcy Act, a creditor's proof of claim must be filed prior to confirmation, with exceptions not involved here, in order to be allowed.

Here creditor-appellant Hoos & Co. had a total claim for \$500,000 against debtor Dynamics Corporation of America. \$300,000 was allowed; \$200,000 was not.

Appellant argues that the \$300,000 and \$200,000 Hoos claims were set forth in one unified proof of claim-- the September 8, 1972 letter from Mr. Lipp to Mr. Tulchin, secretary of the Creditors' Committee, and the proof of claim form which accompanied this letter.

On this issue, the bankruptcy judge disagreed, finding that the letter was not a proper proof of claim because it failed to comply with the requirements of Rule 301.

While I might be inclined to hold otherwise under the more liberal approach which has been taken in this Circuit concerning what is necessary in order for a written instrument to be considered an informal proof of claim, I think that the bankruptcy judge was correct in his conclusion that delivery of the letter to Mr.

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Tulchin did not constitute a filing within the meaning of bankruptcy Rule 509, more particularly, within subsection (c) of this rule.

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Certainly Mr. Tulchin, as secretary of the Creditors' Committee, does not come within the language of this section as one of the named individuals to whom delivery of a proof of claim may be deemed a valid filing.

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I note parenthetically that Mr. Tulchin's subsequent selection as standby trustee, nominal position in Chapter XI reorganizations, does nothelp to bring him within the literal lanaguage of the rule, either.

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The bankruptcy judge declined to extend the language of the rule to include someone in Mr. Tulchin's position because he found that Mr. Tulchin was the agent of the creditors and not the agent of either the court or the debtor.

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I agree that the rationale behind the rule does not extent to Mr. Tulchin an agent of the creditors.

As the advisory committee note to the rule indicated, all the persons specifically enumerated in subsection (c) are persons "charged with the duty of transmitting the paper tothe proper person" either because they are agents of the court or the debtor.

In all the cases which have been cited, the

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2 misdelivery was to an individual who either held one of
3 the named positions or, as in the High Point case, was
4 an agent of the debtor. There is nothing that imposed this
5 duty upon the secretary of the Creditors' Committee.

6 I don't think that Mr. Tulchin's actions
7 soliciting and receiving the proofs of claim put him in
8 the role of one who had a duty to forward to the proper
9 person, that is, filing with the Bankruptcy Court.

10 Mr. Tulchin's actions were perfectly proper
11 as a "function in the interests of creditors," but
12 basically, it was a courtesy on behalf of the creditors
13 and not a duty.

14 Appellant has argued that since delivery to
15 Mr. Tulchin as to the \$300,000 contained in the formal
16 proof of claim was considered to be a proper filing of
17 that part of the claim, disallowance of the \$200,000 set
18 forth in the accompanying letter is arbitrary and unjust.

19 However, I think it is clear that the
20 reason the \$300,000 was allowed was because, after Mr.
21 Tulchin received it, he filed it with the Bankruptcy Court.
22 It is this act which constituted filing of the proof of
23 claim. Mere delivery to Mr. Tulchin did not.

24 I have read the transcript of the hearing
25 before the bankruptcy judge where he considered the facts

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2 of this case very thoroughly, including the sophistication
3 of the lender here, and reliance by the debtor as to the
4 amount of debt filed in the proofs of claim in planning
5 a reorganization such as was achieved here.

6 I also note that claimant never followed up
7 on the proof of claim for the \$200,000, although it
8 had plenty of time in which to do so and had a
9 specific opportunity when, on December 31, 1973, the con-
10 troller of the debtor requested information regarding its
11 indebtedness to the claimant.

12 I think that to the extent it is a dis-
13 cretionary matter within the Bankruptcy Court as to
14 whether a misdelivery under Rule 509 (c) shall constitute
15 a valid finding, the bankruptcy judge did not abuse his
16 discretion in this case.

17 Accordingly, I affirm the decision of the
18 bankruptcy judge and dismiss the appeal.

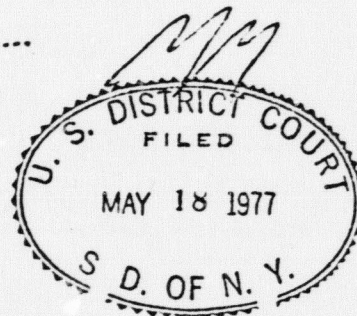
19 So ordered.

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Order of the District Court, May 17, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In the Matter of :
DYNAMICS CORPORATION OF AMERICA, :
Debtor, :
HOOS & CO., :
Claimant-Appellant: :
-against- :
DYNAMICS CORPORATION OF AMERICA, :
Debtor-Appellee. :
-----X



72 B 750

ORDER

IT IS HEREBY ORDERED that the decision of the
Bankruptcy Judge is affirmed and the appeal is dismissed
for the reasons stated in the oral opinion delivered by
this Court on May 17, 1977.

Charles E. Stewart
United States District Judge

DATED: New York, N.Y.

May 17, 1977.

Notice of Appeal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In the Matter of :
DYNAMICS CORPORATION OF AMERICA, : No. 72 B 750
Debtor. :
----- x
HOOS & CO., :
Claimant, :
vs. : NOTICE OF APPEAL
DYNAMICS CORPORATION OF AMERICA, :
Debtor. :
----- x

Notice is hereby given that Hoos & Co., the claimant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order entered by the District Court in this action on the 18th day of May, 1977, which affirmed the February 11, 1977 order of the Bankruptcy Court denying claimant's application for allowance of its claim with respect to \$200,000 principal amount of the notes of debtor.

Dated: June 16, 1977
New York, New York

SULLIVAN & CROMWELL

David B. Rigney
David B. Rigney
Attorneys for Claimant
48 Wall Street,
New York, N.Y. 10005.
(212) 952-8100

TO: KRAUSE, HIRSCH & GROSS
Attorneys for Debtor
41 East 42nd Street
New York, N.Y. 10017

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

- - - - - x

In the Matter of DYNAMICS CORPORATION OF :
AMERICA, :

Debtor. :

(No. 72 B 750) :

Docket No.
77-5015

- - - - - x

HOOS & CO., :

Claimant-Appellant, :

vs. :

DYNAMICS CORPORATION OF AMERICA, :

Debtor-Appellee. :

- - - - - x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

DOROTHY M. SCHLIP, being duly sworn, deposes and says that she is over the age of twenty-one years; that she is employed by the firm of Sullivan & Cromwell, attorneys for Claimant-Appellant Hoos & Co.; that on the 17th day of August, 1977 she served the within Joint Appendix upon Krause, Hirsch & Gross, attorneys for Debtor by depositing a true copy of the same securely enclosed in a postpaid wrapper in the Post Office Box regularly maintained by the United States Government at 48 Wall Street, Borough of Manhattan, City and

State of New York, directed to said attorneys at 41 East
42nd Street, New York, N.Y. 10017, that being the address
within the state designated by them for that purpose upon
the preceding papers in this action.

Barth M. Schlip

Sworn to before me this
17th day of August, 1977

Anthony A. Silvestri
Notary Public

ANTHONY A. SILVESTRI
NOTARY PUBLIC, State of New York
Co. Clk's No. 31-4609678
Qualified in New York County
Commission Expires March 30, 1979